

*State of Iowa*

**Iowa**  
**Administrative**  
**Code**  
**Supplement**

Biweekly  
February 3, 2016



**STEPHANIE A. HOFF**  
ADMINISTRATIVE CODE EDITOR

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Published by the  
STATE OF IOWA  
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

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

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

### **Alcoholic Beverages Division[185]**

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Replace Chapter 4

### **Insurance Division[191]**

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Remove Reserved Chapters 111 to 139  
Insert Chapter 111 and Reserved Chapters 112 to 139

### **Engineering and Land Surveying Examining Board[193C]**

Replace Chapters 3 and 4

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

Replace Chapter 1  
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### **Natural Resources Department[561]**

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### **Public Health Department[641]**

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Replace Chapter 132

### **Medicine Board[653]**

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Replace Chapter 13

### **Revenue Department[701]**

Replace Chapter 38

### **Transportation Department[761]**

Replace Chapter 101

**Voter Registration Commission[821]**

Replace Analysis

Replace Chapter 2

Replace Chapter 8

Replace Chapter 11

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Created within the Department of Commerce by 1986 Iowa Acts, Senate File 2175.  
Formerly Beer and Liquor Control Department[150]

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CHAPTER 4  
LIQUOR LICENSES—BEER PERMITS—WINE PERMITS

[Ch 4, IAC 7/1/75 rescinded 3/7/79; see Chs 4,5]  
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**185—4.1(123) Definitions.**

**4.1(1)** “*Act*” means the alcoholic beverage control Act.

**4.1(2)** “*Division*” means the alcoholic beverages division of the department of commerce.

**4.1(3)** “*Growler*” means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

**4.1(4)** “*Original container*” means a vessel containing an alcoholic beverage that has been lawfully obtained, bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau, and has been securely capped, sealed or corked at the location of manufacture.

**4.1(5)** Reserved.

**4.1(6)** “*Administrator*” means the chief administrative officer of the alcoholic beverages division or a designee.

**4.1(7)** “*Beverages*” as used in Iowa Code section 123.129 does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(5), 123.3(7), and 123.3(37).

This rule is intended to implement Iowa Code sections 123.3 and 123.4.  
[ARC 2382C, IAB 2/3/16, effective 3/9/16]

**185—4.2(123) General requirements.** All applicants for liquor control licenses, wine permits, or beer permits shall comply with the following requirements, where applicable, prior to receiving a liquor license, wine permit, or beer permit.

**4.2(1)** *Cleanliness of premises.* The interior and exterior of all licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments and the Iowa department of inspections and appeals.

**4.2(2)** *Toilet facilities.* All licensees and permittees who mix, serve, or sell alcoholic liquor, wine, or beer for consumption on the licensed premises shall provide for their patrons adequate, conveniently located separate indoor or outdoor toilet facilities for men and women, which shall conform to county, city, and department of inspections and appeals’ rules and regulations. In case of outdoor facilities, they shall be approved by the department of inspections and appeals and the local approving authority where the licensed premises is located.

**4.2(3)** *Water.* All licensed establishments shall be equipped with hot and cold running water from a source approved by an authorized health department.

**4.2(4)** *Financial standing and reputation.* A local authority or the administrator may consider an applicant’s financial standing and good reputation in addition to the other requirements and conditions for obtaining a liquor control license, wine or beer permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a liquor control license, wine or beer permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit or certificate of compliance.

*a.* In evaluating an applicant’s “financial standing,” the local authority or the administrator may consider the following: An applicant’s “financial standing” may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant’s proposed establishment, a record of prompt payment of local or state taxes due, a record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, and a record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

*b.* In evaluating an applicant’s “good reputation,” the local authority or the administrator may consider such factors as, but not limited to, the following: pattern or practice of sales of alcoholic beverages to 19- and 20-year-old persons for which the licensee or permittee, the licensee’s or permittee’s agents or employees, have pled or have been found guilty, pattern and practice by the

licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued, sales to intoxicated persons, licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, the recency of convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

This rule is intended to implement Iowa Code sections 123.3(11), 123.21(11) and 123.30.

**185—4.3(123) Local ordinances permitted.** The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.

This rule is intended to implement Iowa Code section 123.39.

**185—4.4(123) Licensed premises.** The following criteria must be met before a "place" (as used in Iowa Code section 123.3(20)) may be licensed as a "place susceptible of precise description satisfactory to the administrator."

**4.4(1)** The "place" must be owned by or under the control of the prospective licensee.

**4.4(2)** The "place" must be solely within the jurisdiction of one local approving authority.

**4.4(3)** The "place" must be described by a sketch of the "premise" as defined in Iowa Code section 123.3(20) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; all entrances and exits; and indicating the measurements of the "place," and distances between selling/serving areas.

**4.4(4)** The "place" must satisfy the health, safety, fire and seating requirements of the division, local authorities and Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 123.3(20) and 123.4.

**185—4.5(123) Mixed drinks or cocktails not for immediate consumption.** An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

**4.5(1) Definitions.**

*a. Immediate consumption.* For purposes of Iowa Code section 123.49(2) "d" as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, "immediate consumption" is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

*b. Mixed drink or cocktail.* A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

**4.5(2) Location.** Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

**4.5(3) Quantity.** A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

**4.5(4) Container.** A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

*a.* The mixed drink or cocktail shall be mixed and remain stored in the same container.

*b.* The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which

the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

*c.* The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

*d.* An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) “*d*” as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) “*e*.”

*e.* The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

**4.5(5) Label.** A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

*a.* Contents are defined in subrule 4.5(6).

*b.* The label shall be subject to the following requirements and restrictions:

(1) The label shall be affixed to the container in a conspicuous place.

(2) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(3) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(4) The label shall legibly identify the month, day, and year the contents expire.

(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “*b*”(4).

(6) The label shall legibly specify the title of the recipe used for the contents of the container.

(7) The label shall legibly identify the person who prepared the contents of the container.

(8) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words “CONTAINS ALCOHOL.”

(9) The label shall be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 4.5(4) “*b*”(2), or destroyed and disposed of in accordance with applicable law.

(10) A label shall not be reused, nor shall a removed label be reapplied to a container.

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5) “*b*,” shall be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

*c.* A licensee may access a label template on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com).

**4.5(6) Contents.** Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

*a.* A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

*b.* A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

*c.* The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

**4.5(7) Disposal.**

*a.* Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents’ being placed into the empty container is expired and shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

- (1) Added to an empty container and relabeled; or
- (2) Added to another mixed drink or cocktail which is not for immediate consumption.

**4.5(8) Records.** A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

- (1) The month, day, and year the contents are placed into the empty container.
- (2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).
- (3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.
- (4) Each nonalcoholic ingredient placed in the container.
- (5) The recipe title and directions for preparing the contents of the container.
- (6) The size of the batch.
- (7) The identity of the person who prepared the contents of the container.
- (8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.
- (9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).
- (10) The method of destruction and disposal or shall specify that the entire contents were consumed.
- (11) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access record-keeping forms on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com), by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section 123.30(1).

**4.5(9) Dispensing machines.** A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

**4.5(10) Food safety compliance.** A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

**4.5(11) Federal alcohol compliance.** A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

**4.5(12) Violations.** Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

[ARC 0204C, IAB 7/11/12, effective 7/1/12; ARC 0406C, IAB 10/17/12, effective 11/21/12]

**185—4.6(123) Filling and selling of beer in a container other than the original container by class "C" beer permit holders.** Class "C" beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 and in this rule.

**4.6(1) Definition.**

"Beer," for the purpose of this rule, means "beer" as defined in Iowa Code section 123.3(7) and "high alcoholic content beer" as defined in Iowa Code section 123.3(19).

**4.6(2) Sales criteria and restrictions.** All sales made pursuant to this rule shall be made in person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

**4.6(3) Filling and refilling requirements.**

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the permittee or the permittee's employees who are 18 years of age or older.
- c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.
- e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

**4.6(4) Sealing requirements.** A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee's employees in the following manner:

- a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.
- c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

**4.6(5) Restrictions.**

- a. Beer shall not be consumed on the premises of a class "C" beer permit holder.
- b. A growler shall not be filled in advance of a sale.
- c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.
- d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.
- e. A permittee or a permittee's employees shall not allow a consumer to fill or refill a growler.
- f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.
- g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- h. An original container shall only be opened by the permittee or the permittee's employees for the limited purpose of filling or refilling a growler as provided in this rule.

**4.6(6) Violations.** Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132.

[ARC 2382C, IAB 2/3/16, effective 3/9/16]

### **185—4.7(123) Improper conduct.**

**4.7(1) Illegality on premises.** No licensee, permittee, their agent or employee, shall engage in any illegal occupation or illegal act on the licensed premise.

**4.7(2) Cooperation with law enforcement officers.** No licensee, permittee, their agent or employee, shall refuse, fail or neglect to cooperate with any law enforcement officer in the performance of such officer's duties to enforce the provisions of the Act.

**4.7(3) Illegal activities.** No licensee, permittee, their agent or employee, shall knowingly allow in or upon the licensed premises any conduct as defined in Iowa Code sections 725.1, 725.2, 725.3, 728.2, 728.3 and 728.5.

**4.7(4)** Frequenting premises. No licensee, permittee, their agent or employee, shall knowingly permit the licensed premises to be frequented by, or become the meeting place, hangout or rendezvous for known pimps, panhandlers or prostitutes, or those who are known to engage in the use, sale or distribution of narcotics, or in any other illegal occupation or business.

**4.7(5)** Prohibited interest in business of licensee. Rescinded IAB 5/15/91, effective 6/19/91.

**4.7(6)** No licensee, permittee, its agents or employees, shall allow any filled, partially filled, or empty liquor glasses or liquor bottles, including miniature liquor bottles during the holiday season, to be taken off the licensed premises. However, unopened and opened containers and glasses of beer may be allowed to be taken off the licensed premises. A Class “E” liquor control licensee, its agents or employees, shall not permit other liquor control licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the Class “E” licensed premises.

**4.7(7)** Identifying markers. A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor which does not bear identifying markers as prescribed by the administrator of this division. Identifying markers shall demonstrate that the alcoholic liquor was lawfully purchased from this division.

**4.7(8)** A licensee or permittee, or an agent or employee of a licensee or permittee, who sells, gives or otherwise supplies alcoholic liquor, wine or beer to a person 19 or 20 years old does not subject the license or permit to suspension or revocation. The division or the local authority shall not impose any administrative sanction, including license suspension or revocation, upon a licensee or permittee who is convicted of a violation of Iowa Code section 123.47A, nor shall administrative proceedings pursuant to Iowa Code chapter 17A and Iowa Code section 123.39 be commenced against a licensee or permittee for a violation of Iowa Code section 123.47A.

**4.7(9)** The holder of a Class “E” liquor control license shall sell alcoholic liquor in original, sealed and unopened containers only for off-premises consumption.

This rule is intended to implement Iowa Code subsection 123.49(2).

**185—4.8(123) Violation by agent, servant or employee.** Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee or permittee shall be deemed to be the act of the licensee or permittee and shall subject the license or permit of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

**185—4.9(123) Gambling evidence.** The intentional possession or willful keeping of any gambling device, machine or apparatus as defined in Iowa Code section 99A.1 upon the premises of any establishment licensed by the division shall be prima facie evidence of a violation of Iowa Code section 123.49(2) “a” and subject the license of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49.

**185—4.10(123) Suppliers interest.** Rescinded IAB 5/15/91, effective 6/19/91.

**185—4.11** Reserved.

**185—4.12(123) Display of license, permit, or signs.** All licenses, permits or signs issued by the division shall be prominently displayed in full view on the licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

**185—4.13(123) Outdoor service.** Any licensee or permittee having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic liquor or beer permitted by the license or permit in the outdoor area. After a licensee or permittee satisfies the requirements of this rule, they may serve and sell beer or liquor in both their indoor licensed establishment and in their outdoor area at the same time because an outdoor area is merely an extension of their licensed premise and is not a transfer of their license. A licensee or permittee, prior to serving in the outdoor area, must file with this division:

1. A new diagram showing the discernible outdoor area.
2. A letter from licensee or permittee telling what dates the outdoor area will be used.
3. A letter from local authority approving the outdoor area.
4. A letter from the insurance and bonding companies acknowledging that the outdoor area is covered by the dramshop insurance policy and the bond.

This rule is intended to implement Iowa Code sections 123.3(20), 123.4 and 123.38.

**185—4.14(123) Revocation or suspension by local authority.** When the local authority revokes or suspends a beer permit, wine permit, or liquor control license, they shall notify the division in written form stating the reasons for the revocation or suspension and in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

**185—4.15(123) Suspension of liquor control license, wine permit, or beer permit.** At the time of the suspension of any license, wine permit, or beer permit by the division, there shall be placed, in a conspicuous place in the front door or window of the licensed establishment, a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such placard shall also show the number of days and reason for the suspension. No licensee or permittee shall remove, alter, obscure or destroy said placard without the express written approval of the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

**185—4.16(123) Cancellation of beer permits—refunds.** A beer permittee, or the executor or administrator, may voluntarily surrender such permit to the division or to the local authority. When so surrendered to the division, the division will notify the local authority; state whether there is a complaint on file in the division office; and inquire if there are any complaints filed locally charging such permittee with violation of the laws that would make the permittee ineligible for a refund. When the permit is surrendered to the local authority, the local authority shall notify the division and inquire if there is a complaint on file with the division that would make the permittee ineligible for a refund. The local authority by itself, in the case of retail beer permits, shall make the refund on a quarterly use basis starting from the effective date of the permit. The local authority will complete, and send to the division, a cancellation certificate. The certificate is to be furnished by the division. The permit is to be attached to the cancellation certificate, if at all possible. The division must have all cancellations reported to them.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

**185—4.17(123) Prohibited storage of alcoholic beverages and wine.** No licensee shall permit alcoholic beverages and wine, purchased under authority of a retail license or retail permit, to be kept or stored upon any premises other than those licensed. However, under special circumstances, the administrator may authorize the storage of alcoholic beverages and wine on premises other than those covered by the license or permit. The administrator may allow Class “D” liquor control licensees to store alcoholic liquor and wine in a bonded warehouse to be used for consumption in Iowa, under the authority of a Class “D” liquor control license.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(11).

**185—4.18(123) Transfer of license or permit to another location.** A licensee or permittee cannot transfer to anyone else the right to use the liquor license, wine permit, or beer permit of the licensee or permittee; the right of transfer is merely an opportunity for a licensee or permittee to use the licensee’s or permittee’s liquor license, wine permit, or beer permit at a different location. A liquor license, wine permit, or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

**4.18(1) Permanent transfers.** A person may obtain an application for a permanent transfer from the local authority or the division. The application must be approved by the local authority and sent to the division prior to the transfer. An endorsement from the insurance company holding the dramshop policy

listing the new address must be sent to the division prior to the transfer. When the above requirements are met, the division shall issue an amended license or permit showing the new permanent address.

**4.18(2) Temporary transfers.** If the transfer of a license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at 24 hours and transfer time shall not exceed seven days. A letter from the local authority granting the temporary transfer must be sent to the division. The insurance company holding the dramshop policy must be notified of any change of address.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

**185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer.** Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against liquor control licensees and beer and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626, entitled “Executions.”

**4.19(1)** A secured party as defined in Iowa Code section 554.9105(1) “m” may take possession of and dispose of a liquor control licensee’s or permittee’s alcoholic liquor, wine, and beer in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the liquor control license or permit of its debtor as defined in Iowa Code section 554.9105(1) “d” for the purpose of disposing of the alcoholic liquor, wine, and beer. However, if the debtor is a Class “E” liquor control licensee, the secured party may not purchase alcoholic liquor from the division to continue to operate its debtor’s business. A secured party operating under the liquor control license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a liquor control licensee’s or permittee’s alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer and shall state the reasonable length of time in which it intends to operate under the liquor control license or permit of its debtor. The secured party shall notify the division in writing when the disposition of its collateral has been completed, and the secured party shall cease operating under the liquor control license or permit of its debtor.

**4.19(2)** A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a liquor control licensee’s or permittee’s alcoholic liquor, wine, and beer and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine and beer only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the liquor control licensee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division in writing at the time the sheriff or officer takes possession of a liquor control licensee’s or permittee’s alcoholic liquor, wine, and beer and shall further notify the division of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.21(3), and 123.38.

**185—4.20(123) Liquor store checks accepted.** The Iowa state liquor stores and the division may accept checks from holders of a retail liquor control license, including a Class “E” licensee, under the following conditions:

1. The check must be either the personal check of the licensee or the business check of the licensee. The business check must be the named establishment on the license and cannot be a check on another business owned or operated by the licensee.

2. The check must be signed by the licensee. (For all holders of liquor control licenses this is interpreted as those persons whose authorized signatures are on file with the bank for the licensee’s account). However, this does not preclude an agent of the licensee from presenting a check signed by the licensee in the normal transaction of buying liquor.

3. Traveler’s checks and bank drafts, signed by the licensee, will be accepted.

4. Personal checks or traveler’s checks may be accepted as payment for purchases in state liquor stores. Second party checks shall not be accepted as payment for purchases in state liquor stores. Vendors

shall follow the policy established by the administrator of the division for accepting personal checks and traveler's checks for the purchase of alcoholic beverages.

**4.20(1)** If a licensee presents this division with a check which is subsequently dishonored by the licensee's bank, the administrator of this division shall cause a written notice of nonpayment and penalty to be served upon the licensee. If the licensee fails to satisfy the obligation within ten days after service of the notice, the administrator or designee shall hold a hearing as in other contested cases pursuant to Iowa Code chapter 17A to determine whether or not the licensee failed to satisfy the obligation within ten days after service of the notice of nonpayment and penalty. If the administrator determines that the licensee has failed to satisfy the obligation, after notice and an opportunity to be heard, the administrator shall suspend the licensee's liquor control license for a period of not less than 3 and not more than 30 days.

**4.20(2)** A retail liquor establishment which tenders the division one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 90 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period. A retail liquor establishment which tenders the division more than one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 180 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period.

During the period that a licensee may not tender checks to the state liquor stores or this division in payment for alcoholic liquor, state liquor stores and this division may accept from the licensee: cash, money order payable to the division for the amount of the purchase, bank cashier's check signed by a bank official and made payable to the division for the amount of the purchase, or the licensee's personal or business check made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn.

**4.20(3)** The division may collect from the licensee a \$10 fee for each dishonored check tendered to the division by a licensee for the purchase of alcoholic beverages.

**4.20(4)** The division may accept from the general public for alcoholic beverages traveler's checks issued in a foreign country if payment is in U.S. dollars.

**4.20(5)** The division may require, at the discretion of the administrator, that a licensee submit a letter of credit in a reasonable amount to be determined by the administrator for future purchases of alcoholic liquor from the division, when a licensee tenders to the division a check which is subsequently dishonored by the bank on which the check is drawn if the licensee fails to satisfy the obligation within ten days after service of notice of nonpayment and penalty.

This rule is intended to implement Iowa Code sections 123.4 and 123.24.

**185—4.21(123) Where retailers must purchase wine.** Retail licensees and retail permittees must purchase their wine from either a wine wholesaler or a wine and beer wholesaler. Retail licensees and retail permittees cannot buy wine from other retailers.

This rule is intended to implement Iowa Code subsections 123.30(3) and 123.178(3).

**185—4.22(123) Liquor on licensed premises.** Holders of liquor control licenses must purchase their liquor supplies from state liquor stores.

**4.22(1) Exception to the above requirement.** "Bona fide conventions or meetings" may bring their own legal liquor onto licensed premises under the following conditions:

*a.* "Bona fide conventions or meetings" shall be construed to mean an identifiable body of persons gathered together in furtherance of a specific common purpose or cause, whether political, fraternal, or business, including but not limited to structured club meetings and conventions, professional association functions, employer-employee gatherings and political dinners. Neither the mere purchase nor consumption of liquor nor the purchase of an admission ticket shall be deemed to create a specific common purpose or cause.

*b.* Liquor may be brought onto the licensed premises at a bona fide convention or meeting by either the sponsoring entity or the individuals comprising that entity.

*c.* Consumption or dispensation of liquor brought onto the licensed premises by a bona fide convention or meeting must be confined to the meeting place or convention rooms within the licensed premises.

*d.* The liquor must be served to the delegates or guests without cost.

*e.* At the completion of the convention or meeting, all liquor brought onto the licensed premises by the members of the convention or meeting must be removed from the licensed premises by those members.

*f.* All other laws and rules governing the license shall apply to dispensing and consumption of liquor at bona fide conventions or meetings, including hours for consumption and Sunday sales.

**4.22(2)** Reserved.

This rule is intended to implement Iowa Code sections 123.30, 123.46, and 123.95.

**185—4.23(123) Liquor on unlicensed places.** Liquor may be kept and consumed but not sold on unlicensed places under the following conditions:

**4.23(1)** Liquor may be kept and consumed in a private home at any time.

**4.23(2)** Liquor may be kept and consumed, by the guests or residents, in the residential or sleeping quarters of a hotel or motel at any time. This is considered as an extension of the private home.

**4.23(3)** Liquor may be consumed at a private social gathering in a private place at any time.

**4.23(4)** A private place is a location which meets all of the following criteria:

*a.* One to which the general public does not have access at the time the liquor is kept, dispensed or consumed; one at which the attendees are limited to the bona fide social hosts and invited guests.

*b.* One which is not of a commercial nature at the time the liquor is consumed or dispensed at the location.

*c.* One where goods or services are neither sold nor purchased at the time the liquor is consumed or dispensed at the location.

*d.* One where the use of the location was obtained without charges or rent or any other thing of value was exchanged for its use.

*e.* One which is not a licensed premises.

*f.* One where no admission fees or other kinds of entrance fees, fare, ticket, donation or charges are made or are required of the invited guests to enter the location.

This rule is intended to implement Iowa Code section 123.95.

**185—4.24(123) Alcoholic liquor and wine on beer permit premises.** Alcoholic liquor and wine may not be kept, consumed, or dispensed for any purpose by any entity or individual on the premises of a Class “B” beer permit holder.

This rule is intended to implement Iowa Code section 123.141.

**185—4.25(123) Age requirements.** Persons 21 years of age or older may hold a liquor license, wine permit, or beer permit; however, persons who are between the ages of 18 and 21 and hold a liquor license, wine permit, or beer permit before September 1, 1986, are not affected by or subject to this rule, and may hold such license or permit even though the licensee or permittee has not attained the age of 21. Persons 18 years of age and older may be bartenders, waiters, waitresses, and may handle alcoholic beverages, wine, and beer during the course of the person’s employment for a licensee or permittee in establishments in which alcoholic beverages, wine, and beer are consumed. Persons 16 years of age and older may sell beer and wine in off-premises beer and wine establishments. Persons must be 18 years of age or older to work in a state liquor store.

This rule is intended to implement Iowa Code sections 123.30, 123.47A and 123.49.

**185—4.26(123) Timely filed status.**

**4.26(1)** In addition to the requirements which may be imposed by a local authority upon the holder of an alcoholic beverages license or permit to obtain timely filed status of a renewal application, the division may grant timely filed status if the applicant complies with the following conditions:

*a.* The applicant files a completed application with the local authority or the division as required by applicable law.

*b.* The applicant files a current dram shop liability certificate with the local authority or the division if proof of dram shop liability is required as a condition precedent to the issuance of the license or permit.

*c.* The applicant pays the appropriate license or permit fee in full to the local authority or the division as required by applicable law.

*d.* The applicant files a bond with the local authority or the division if a bond is required as a condition precedent to the issuance of the license or permit under applicable law.

**4.26(2)** Timely filed status allows the holder of the license or permit to continue to operate under a license or permit after its expiration and until the local authority and the division have finally determined whether the license or permit should be issued. If the application for the license or permit is denied, timely filed status continues until the last day for seeking judicial review of the division's action.

**4.26(3)** An applicant for a new alcoholic beverages license or permit may not sell alcoholic liquor, wine or beer in the proposed establishment until a license or permit has been granted by the division.

This rule is intended to implement Iowa Code sections 123.32, 123.35 and 17A.18.

**185—4.27(123) Effect of suspension.** Subject to the right to convey a suspended establishment under Iowa Code section 123.39, no beer, wine, or liquor can be sold or consumed in an establishment during a suspension period. An establishment may be open during a suspension period to conduct lawful business other than the sale of liquor, wine, and beer as long as no liquor, wine, or beer is sold or consumed during the suspension period.

This rule is intended to implement Iowa Code section 123.39.

**185—4.28(123) Use of establishment during hours alcoholic liquor, wine, and beer cannot be consumed.** No one, including licensee, permittee, and employees can consume beer, wine, or alcoholic beverages in their licensed establishment during hours which beer, wine, and alcoholic beverages cannot be sold. An establishment covered by a liquor license, wine permit, or beer permit can be used as a restaurant or any other lawful purpose during hours which beer, wine, or alcoholic liquor cannot be sold as long as beer, wine, or alcoholic beverages are not consumed during these hours.

This rule is intended to implement Iowa Code section 123.49.

**185—4.29** Rescinded, effective 7/1/85.

**185—4.30(123) Persons producing fuel alcohol.** Persons producing fuel alcohol for their own use or to be sold commercially do not have to obtain a license or permit from the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.41.

**185—4.31(123) Storage of beer.** No retail liquor licensee or retail beer permittee shall store beer except on premises licensed for retail sale and then only to the extent that the beer is intended for sale to consumers from the individually licensed premises where stored. The adoption of this rule shall not preclude a retail liquor licensee or a retail beer permittee from picking up beer from Class "A" and "F" beer permittees and directly transporting the beer to the retail establishment where the beer is intended to be sold at retail.

This rule is intended to implement Iowa Code section 123.21.

**185—4.32(123) Delivery of alcoholic liquor.** Individuals who do not work for this division may operate a delivery service in which they will charge licensees a fee for picking up their alcoholic liquor orders at this division's liquor stores and delivering it to their establishments.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(10).

**185—4.33(123) Delivery of beer and wine.** Licensees and permittees who hold a license or permit which allows them to sell bottled wine and bottled beer may deliver beer and wine to residences if the customers telephoned and requested that the beer and wine be delivered.

This rule is intended to implement Iowa Code subsection 123.21(10).

**185—4.34(123) Determination of population.** Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses and permits in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses and permits.

This rule is intended to implement Iowa Code subsection 123.21(11).

**185—4.35(123) Minors in licensed establishments.** Because Iowa law does not prohibit minors from being in licensed establishments, a minor can be in a licensed establishment if local authority does not have a local ordinance prohibiting minors from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code subsection 123.21(5).

**185—4.36(123) Sale of alcoholic liquor and wine stock when licensee or permittee sells business.** When a licensee or permittee goes out of business, the licensee or permittee may sell the licensee's or permittee's stock of alcoholic liquor and wine to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code subsection 123.21(5).

**185—4.37(123) Business as usual on election days.** Licensees and permittees may sell alcoholic liquor, wine, or beer during regular hours on days local and national elections are held because present Iowa law does not restrict the sale of liquor, wine, and beer on election days.

This rule is intended to implement Iowa Code subsection 123.21(3).

**185—4.38(123) Sunday sale of wine.** A holder of a Class "B" wine permit or combination retail wine license, excluding any liquor control licensee or beer permittee which does not qualify for Sunday sales under Iowa Code sections 123.36(6) and 123.134(5), respectively, may sell wine for consumption off the premises between the hours of 10 a.m. and 12 midnight on Sundays. No fee shall be imposed for that privilege.

This rule is intended to implement Iowa Code subsection 123.49(2).

**185—4.39(123) Intoxication notice.** Rescinded IAB 8/18/93, effective 7/29/93.

**185—4.40(123) Warehousing of beer and wine.** A person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall warehouse their wine or beer inventory within the state of Iowa. Persons issued a Class "A" wine permit or Class "A" or "F" beer permit prior to June 10, 1987, shall comply upon renewal or November 1, 1987, whichever date occurs first. A warehouse of a person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall be considered a licensed premises.

This rule is intended to implement Iowa Code section 123.127.

**185—4.41(123) Vending machines to dispense alcoholic beverages prohibited.** A liquor control licensee or beer or wine permittee shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages. A vending machine is defined as a slug, coin, currency or credit card operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used

for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms.

This rule is intended to implement Iowa Code sections 123.47, 123.47A, 123.49(1), 123.49(2) "b," 123.49(2) "h," and 123.49(2) "k."

[Filed December 14, 1972]

[Filed 5/19/78, Notice 4/5/78—published 6/14/78, effective 7/20/78]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed 1/4/82, Notice 9/2/81—published 1/20/82, effective 2/25/82]

[Filed 5/18/82, Notice 3/3/82—published 6/9/82, effective 7/14/82]

[Filed 6/17/83, Notice 3/30/83—published 7/6/83, effective 8/10/83]<sup>1</sup>

[Filed 9/17/84, Notice 6/20/84—published 10/10/84, effective 11/14/84]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]

[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]

[Filed emergency 7/1/85—published 7/31/85, effective 7/1/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]<sup>2</sup>

[Filed emergency 8/22/86—published 9/10/86, effective 9/30/86]<sup>2</sup>

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 11/12/86—published 12/3/86, effective 11/12/86]

[Filed emergency 3/6/87—published 3/25/87, effective 3/6/87]

[Filed 4/17/87, Notice 12/31/86—published 5/6/87, effective 6/10/87]

[Filed 7/24/87, Notice 3/25/87—published 8/12/87, effective 9/16/87]

[Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]

[Filed 1/27/92, Notice 8/7/91—published 2/19/92, effective 3/25/92]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 9/26/94, Notice 6/22/94—published 10/26/94, effective 11/30/94]

[Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]

[Filed Emergency ARC 0204C, IAB 7/11/12, effective 7/1/12]

[Filed ARC 0406C (Notice ARC 0205C, IAB 7/11/12), IAB 10/17/12, effective 11/21/12]

[Filed ARC 2382C (Notice ARC 2255C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]

<sup>1</sup> Effective date of 4.32 delayed seventy days by the Administrative Rules Review Committee on 8/2/83.

<sup>2</sup> Two ARCs. See Alcoholic Beverages Division in IAB.



**INSURANCE DIVISION[191]**

[Prior to 10/22/86, see Insurance Department[510], renamed Insurance Division[191] under the “umbrella” of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

*ORGANIZATION AND PROCEDURES*

## CHAPTER 1

## ORGANIZATION OF DIVISION

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CHAPTER 111  
CORPORATE GOVERNANCE ANNUAL DISCLOSURE

**191—111.1(521H) Purpose.** The purpose of this chapter is to implement 2016 Iowa Code chapter 521H and set forth the procedures for filing and the required contents of the corporate governance annual disclosure.

[ARC 2377C, IAB 2/3/16, effective 3/9/16]

**191—111.2(521H) Authority.** This chapter is promulgated pursuant to the authority vested in the commissioner under 2016 Iowa Code section 521H.4 in accordance with the procedures set forth in Iowa Code chapter 17A.

[ARC 2377C, IAB 2/3/16, effective 3/9/16]

**191—111.3(521H) Definitions.** For the purpose of these rules, the terms “commissioner,” “corporate governance annual disclosure,” “disclosure,” “insurance group,” “insurance holding company system,” and “insurer” shall have the meanings set forth in 2016 Iowa Code section 521H.2. In addition, the following definition shall apply:

“*Senior management*” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other senior level executive.

[ARC 2377C, IAB 2/3/16, effective 3/9/16]

**191—111.4(521H) Filing procedures.**

**111.4(1)** An insurer, or the insurance group of which the insurer is a member, required to file a corporate governance annual disclosure by 2016 Iowa Code section 521H.3 shall no later than June 1 of each calendar year submit to the commissioner a corporate governance annual disclosure that contains the information described in rule 191—111.5(521H).

**111.4(2)** The corporate governance annual disclosure must include a signature of the insurer’s or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the insurer’s or insurance group’s board of directors or the appropriate committee thereof.

**111.4(3)** The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these rules and is permitted to customize the corporate governance annual disclosure to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure and of the policies and practices utilized by the insurer or insurance group.

**111.4(4)** For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer’s or insurance group’s risk appetite is determined, or the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which one of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

**111.4(5)** If the corporate governance annual disclosure is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In

this instance, a copy of the corporate governance annual disclosure must also, upon request, be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer.

**111.4(6)** An insurer or insurance group may comply with this rule by referencing the most recently filed version of other existing documents including, but not limited to, own risk and solvency assessment summary report, insurance holding company system annual registration report (Form B), enterprise risk report (Form F), Securities and Exchange Commission proxy statements, and foreign regulatory reporting requirements if the documents provide information that is comparable to the information described in rule 191—111.5(521H). The insurer or insurance group shall clearly reference within the corporate governance annual disclosure the location of the relevant information and attach the reference document if it is not already filed or available to the regulator.

**111.4(7)** Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

[ARC 2377C, IAB 2/3/16, effective 3/9/16]

### **191—111.5(521H) Contents of corporate governance annual disclosure.**

**111.5(1)** The insurer or insurance group shall be as descriptive as possible in completing the corporate governance annual disclosure, with inclusion of attachments or example documents that are used in the governance process since these may provide a means to demonstrate the strengths of the insurer's or insurance group's governance framework and practices.

**111.5(2)** The corporate governance annual disclosure shall describe the insurer's or insurance group's corporate governance framework and structure, including consideration of the following:

*a.* The board of directors and committees thereof ultimately responsible for overseeing the insurer or insurance group and the level or levels at which that oversight occurs. The insurer or insurance group shall describe and discuss the rationale for the current board of directors' size and structure; and

*b.* The duties of the board of directors and each of its significant committees and how they are governed, which may include bylaws, charters, or informal mandates as well as how the board of directors' leadership is structured and a discussion of the roles of the chief executive officer and chairperson of the board of directors within the organization.

**111.5(3)** The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

*a.* How the qualifications, expertise and experience of each board of directors member meet the needs of the insurer or insurance group.

*b.* How an appropriate amount of independence is maintained on the board of directors and its significant committees.

*c.* The number of meetings held by the board of directors and its significant committees over the past year as well as information on director attendance.

*d.* How the insurer or insurance group identifies, nominates and elects members to the board of directors and its committees. The discussion should include, for example:

(1) Whether a nomination committee is in place to identify and select individuals for consideration.

(2) Whether term limits are placed on directors.

(3) How the election and reelection processes function.

(4) Whether a board of directors diversity policy is in place and, if so, how it functions.

*e.* The processes in place for the board of directors to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board of directors or committee training programs that have been put in place.

**111.5(4)** The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

*a.* Any processes or practices such as suitability standards to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(1) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(2) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

*b.* The insurer's or insurance group's code of business conduct and ethics, the discussion of which should consider, for example:

(1) Compliance with laws, rules, and regulations; and

(2) Proactive reporting of any illegal or unethical behavior.

*c.* The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, but are not limited to, the following:

(1) The role of the board of directors in overseeing management compensation programs and practices.

(2) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.

(3) How compensation programs are related to both company and individual performance over time.

(4) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.

(5) Any clawback provisions built into the compensation programs to recover awards or payments if the performance measures upon which the clawback provisions are based are restated or otherwise adjusted.

(6) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

*d.* The insurer's or insurance group's plans for chief executive officer and senior management succession.

**111.5(5)** The insurer or insurance group shall describe the processes by which the board of directors, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's or insurance group's business activities, including a discussion of:

*a.* How oversight and management responsibilities are delegated among the board of directors, its committees and senior management.

*b.* How the board of directors is kept informed of the insurer's or insurance group's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks.

*c.* How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board of directors. This description may include, but is not limited to, the following critical risk areas of the insurer:

(1) Risk management processes (An own risk and solvency assessment summary report filer may refer to the filer's own risk and solvency assessment summary report prepared pursuant to Iowa Code chapter 522);

(2) Actuarial function;

(3) Investment decision-making processes;

(4) Reinsurance decision-making processes;

(5) Business strategy and finance decision-making processes;

(6) Compliance function;

(7) Financial reporting and internal auditing; and

(8) Market conduct decision-making processes.  
[ARC 2377C, IAB 2/3/16, effective 3/9/16]

These rules are intended to implement 2016 Iowa Code chapter 521H.

[Filed ARC 2377C (Notice ARC 2181C, IAB 10/14/15), IAB 2/3/16, effective 3/9/16]

CHAPTERS 112 to 139  
Reserved



CHAPTER 3  
APPLICATION AND RENEWAL PROCESS

[Prior to 11/14/01, see 193C—Chapter 1]

**193C—3.1(542B) General statement.** A person requesting to be licensed as a professional engineer or professional land surveyor shall submit a completed, standardized, notarized application form, which may be obtained from the board's office or electronically from the board's Internet Web page.

**3.1(1) Application expiration.** On the examination application due date, the examination application is considered current if it has been one year or less since it was signed and notarized. A comity application expires one year from the date that it was signed and notarized.

**3.1(2) Branch licensure.** A list of engineering branches in which licensure is granted can be obtained from the board's office. Branches conform to those branches generally included in collegiate curricula. An applicant for licensure in Iowa shall be licensed first in the branch or branches indicated by the applicant's education and experience. A minimum of 50 percent of the required practical experience in which the individual is to be examined shall have been in that same branch of engineering.

**3.1(3) Academic transcripts.**

*a. United States institutions.* Completion of post-high school education shall be evidenced by the board's receipt of an applicant's transcripts directly from the office of the registrar of each institution attended.

*b. Institutions outside the United States.* Transcripts from institutions located outside the boundaries of the United States of America shall be sent directly from the institution to an evaluation service and shall be evaluated for authenticity and substantial equivalency with Accreditation Board for Engineering and Technology, Inc. (ABET) or Engineering Accreditation Commission (EAC) accredited engineering programs. To be readily acceptable, such evaluations shall be from the National Council of Examiners for Engineering and Surveying (NCEES). However, the board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. The expense of the evaluation is the responsibility of the applicant. Each evaluation shall be sent directly to the board from the evaluation service and shall include a copy of the transcript in the form sent to the evaluation service directly from the educational institution. Each evaluation must address both whether the transcript is authentic and whether the engineering program is equivalent to those accredited by ABET or EAC.

[ARC 9462B, IAB 4/20/11, effective 5/25/11; ARC 0362C, IAB 10/3/12, effective 11/7/12]

**193C—3.2(542B) Examination application components and due dates.**

**3.2(1) Fundamentals of Engineering examination application components and due dates.** Applications for the Fundamentals of Engineering examination are submitted directly to the examination service selected by the board to administer the examinations.

**3.2(2) Fundamentals of Land Surveying examination application components.** The components of this application include: the completed, notarized application form; references pursuant to 193C—paragraph 5.1(5)“b”; and transcripts. Fundamentals of Land Surveying examination applications must be submitted to the board office. Applications will be reviewed by the board at the next regularly scheduled board meeting.

**3.2(3) Principles and Practice examination application components and due dates.** Principles and Practice of Engineering and Principles and Practice of Land Surveying examination applications require a detailed review and must, therefore, be submitted to the board office, postmarked on or before July 15 of each year for the examination given in the fall and on or before January 15 of each year for the examination given in the spring. The Principles and Practice examination application packet, including the following components, must be postmarked on or before the deadline date: (1) the completed, notarized and signed application form; (2) the required number of references; (3) the project statement; and (4) the ethics questionnaire. In addition, a complete application file must include verification of examination records and transcripts. Examination applications will not be reviewed by the board until the application file is complete. Since the verification of examination records must be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering examination, the applicant should contact the other jurisdiction well in advance of the deadline for submittal of the application to

request this verification in order to ensure that the verification is received by the board no later than July 25 for the fall examination or by January 25 for the spring examination. For transcripts, the applicant should contact the university well in advance of the deadline for submittal of the application to ensure that the transcripts are received no later than July 25 for the fall examination or by January 25 for the spring examination. Examination application files that are not complete by January 25 will not be reviewed for the spring examination. Likewise, examination applications that are not complete by July 25 will not be reviewed for the fall examination.

[ARC 7754B, IAB 5/6/09, effective 6/10/09; ARC 1349C, IAB 2/19/14, effective 3/26/14; ARC 2388C, IAB 2/3/16, effective 3/9/16]

### **193C—3.3(542B) Comity applications.**

**3.3(1)** The components of a comity application include: the completed, notarized application form; the ethics questionnaire; references; transcripts; and verification of examinations, as appropriate. Comity applicants may submit the NCEES record in lieu of providing references, verifications, transcripts, and employment history. Since the verification of examination records must, in most cases, be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering and Principles and Practice Engineering examinations, the applicant should contact the other jurisdiction in advance of submitting the application to request this verification and make every effort to have the verification sent to the board at the time that the application is submitted. Likewise, for transcripts the applicant should contact the university in advance of submitting the application to make every effort to have the transcripts transmitted to the board at the time that the application is submitted.

**3.3(2)** Comity applications will be reviewed as they are completed. Comity applications will not be reviewed until all components have been received.

**3.3(3)** Comity applicants will be notified in writing via regular mail or E-mail regarding the results of the review of their applications.

**3.3(4)** Temporary permits. The board does not issue temporary permits. Based upon review by a board member, temporary permits were previously issued to applicants whose applications met all requirements and who were expected to qualify for approval by the full board at the next regularly scheduled board meeting. Since applications that meet these criteria are now routinely processed as they are completed and reviewed, temporary permits are no longer necessary.

[ARC 7754B, IAB 5/6/09, effective 6/10/09]

### **193C—3.4(542B) Renewal applications.**

**3.4(1)** *Expiration dates.* Certificates of licensure expire biennially on December 31. Certificates that were initially issued in even-numbered years expire in odd-numbered years and certificates that were initially issued in odd-numbered years expire in even-numbered years. In order to maintain authorization to practice engineering or land surveying in Iowa, licensees are required to renew their certificates of licensure on or prior to the expiration date. A licensee who fails to renew prior to the date the certificate expires shall not be authorized to practice in Iowa unless the certificate is reinstated as provided in these rules. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee within 30 days of the date of expiration.

**3.4(2)** *Renewal notification.* The board typically mails a renewal notification to a licensee's last-known address at least one month prior to the license expiration date. Neither the board's failure to mail a renewal notification nor the licensee's failure to receive a renewal notification shall affect in any way the licensee's duty to timely renew if the licensee intends to continue practicing in Iowa. Licensees need to contact the board office if they do not receive a renewal notification prior to the expiration date.

**3.4(3)** *Renewal process.* Upon receipt of a timely and sufficient renewal application, with the proper fee, the board's executive secretary shall issue a new license reflecting the next expiration date, unless grounds exist for denial of the application.

**3.4(4)** *Notification of expiration.* The board shall notify licensees whose certificates of licensure have expired. This notification may be provided through publication in the division's newsletter. The failure of the board to provide this courtesy notification, or the failure of the licensee to receive the courtesy notification, shall not extend the date of expiration.

**3.4(5) *Sanction for practicing after license expiration.*** A licensee who continues to practice in Iowa after the license has expired shall be subject to disciplinary action. Such unauthorized activity may also provide grounds to deny a licensee's application to reinstate.

**3.4(6) *Timely and sufficient renewal application.*** Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the expiration date of the certificate;
- b. Fully completed; and
- c. Accompanied by the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is left off the application or is incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

**3.4(7) *Responsibility for accuracy of renewal application.*** The licensee is responsible for verifying the accuracy of the information submitted on the renewal application regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of a licensee's firm submits an application for renewal on behalf of the licensee and that information is incorrect, the licensee will be held responsible for the information and may be subject to disciplinary action.

**3.4(8) *Denial of renewal application.*** If the board, upon receipt of a timely, complete and sufficient application to renew a certificate of licensure, accompanied by the proper fee, denies the application, the executive secretary shall send written notice to the applicant by restricted, certified mail, return receipt requested, identifying the basis for denial. Grounds may exist to deny an application to renew a license if, for instance, the licensee has failed to satisfy the continuing education required as a condition for licensure. If the basis for the denial is a pending disciplinary action or a disciplinary investigation which is reasonably expected to culminate in a formal disciplinary action, the board shall utilize the procedures applicable to disciplinary actions, including the initiation of a contested case. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—7.40(546,272C).

**3.4(9) *Continuing education requirement.*** A licensee who does not satisfy the continuing education requirements for licensure renewal will be denied renewal of licensure in accordance with subrule 3.4(8).

**3.4(10) *Consent order option.*** When a licensee appears to be in violation of mandatory continuing education requirements of 193C—Chapter 7, the board may, in lieu of proceeding to a contested case hearing on the denial of renewal as provided in uniform division rule 193—7.40(546,272C), offer the licensee the opportunity to sign a consent order. While the terms of a consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation, and establish deadlines for compliance, and the consent order may impose additional educational requirements upon the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and, if the terms of the consent order are not complied with, will be subject to disciplinary action. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to uniform division rule 193—7.40(546,272C).

**3.4(11) *Inactive status.*** Licensees who are not engaged in engineering or land surveying practices that require licensure in Iowa may be granted inactive status. No inactive licensee may practice in Iowa unless otherwise exempted in Iowa Code chapter 542B.

### **193C—3.5(542B) Reinstatement of licensure.**

**3.5(1)** To reinstate a license that has lapsed for one year or more, the applicant for reinstatement must pay the fee required by 193C—2.1(542B) and must satisfy one of the following requirements:

- a. Provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession); or
- b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or

*c.* For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C—subrule 7.8(2).

**3.5(2)** To reinstate a license that has lapsed for less than one year, the applicant for reinstatement must pay the fee required by 193C—2.1(542B) and must satisfy one of the following requirements:

*a.* Provide documentation of 30 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 20 professional development hours for each profession); or

*b.* Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or

*c.* For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C—subrule 7.8(2).

**3.5(3)** A lapsed license may not be reinstated to inactive status.

**3.5(4)** To reinstate from inactive status to active status, the applicant for reinstatement must pay the fee required by 193C—2.1(542B) and must provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession).

These rules are intended to implement Iowa Code sections 542B.2, 542B.6, 542B.13, 542B.14, 542B.15, 542B.20, 542B.30, 272C.2 and 272C.3.

[Filed 10/24/01, Notice 8/8/01—published 11/14/01, effective 1/1/02]

[Filed 9/22/05, Notice 6/8/05—published 10/12/05, effective 11/16/05]

[Filed 2/20/08, Notice 10/24/07—published 3/12/08, effective 4/16/08]

[Filed ARC 7754B (Notice ARC 7433B, IAB 12/17/08), IAB 5/6/09, effective 6/10/09]

[Filed ARC 9462B (Notice ARC 9369B, IAB 2/9/11), IAB 4/20/11, effective 5/25/11]

[Filed ARC 0362C (Notice ARC 0156C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]

[Filed ARC 1349C (Notice ARC 1254C, IAB 12/25/13), IAB 2/19/14, effective 3/26/14]

[Filed ARC 2388C (Notice ARC 2219C, IAB 10/28/15), IAB 2/3/16, effective 3/9/16]

CHAPTER 4  
ENGINEERING LICENSURE  
[Prior to 11/14/01, see 193C—1.4(542B)]

**193C—4.1(542B) Requirements for licensure by examination.** The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

**4.1(1)** First, the applicant for initial licensure in Iowa must satisfy the educational requirements as follows:

*a.* Graduation from an engineering program of four years or more.

(1) If an applicant did not graduate from an Accreditation Board of Engineering and Technology/Engineering Accreditation Commission (ABET/EAC)- or Canadian Engineering Accreditation Board (CEAB)-accredited curriculum, the applicant must also complete, in addition to the engineering degree, one extra year of practical experience satisfactory to the board after receiving the engineering degree.

(2) An engineering technology curriculum does not constitute an engineering program of four years or more.

*b.* If an applicant obtained an associate of science degree or a more advanced degree between July 1, 1983, and June 30, 1988, the board shall only require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board and six years of practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the Fundamentals of Engineering examination. (Applicants qualifying under this subrule must successfully complete the Fundamentals of Engineering examination by June 30, 2001.)

**4.1(2)** Second, the applicant must successfully complete the Fundamentals of Engineering examination (FE exam).

*a.* An applicant may take the FE exam any time after the educational requirements as specified above are completed, but the applicant must successfully complete the FE exam prior to taking the Principles and Practice of Engineering examination.

*b.* College seniors studying an ABET/EAC- or CEAB-accredited curriculum may take the FE exam during the final academic year. Applicants will be permitted to take the examination during the testing period which most closely precedes anticipated graduation.

*c.* An applicant who graduated from a satisfactory engineering program and has 25 years or more of work experience satisfactory to the board shall not be required to take the FE exam.

*d.* An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, shall not be required to take the FE exam.

*e.* All FE exam candidates will apply directly to the National Council of Examiners for Engineering and Surveying (NCEES) and will self-attest as to the candidate's eligibility to sit for the FE exam. The board will verify acceptable education and experience at the time an applicant applies to sit for the Principles and Practice of Engineering examination or applies for an Engineer Intern (EI) number. The board shall apply the education and experience standards set forth in this rule but will allow reasonable flexibility in timing in the event an applicant sat for and passed the FE exam at a point earlier than provided in this rule. The board will not, however, issue an EI number unless all experience required for candidates who hold engineering degrees from nonaccredited programs has been satisfied at the time of the EI application.

**4.1(3)** Third, the applicant must satisfy the qualifying experience requirements. The purpose of this provision is to ensure that the applicant has acquired the professional judgment, capacity and competence to design engineering works, structures, and systems. The following criteria will be considered by the board in determining whether an applicant's experience satisfies the statutory requirements.

*a. Oversight.* All applicants must have direct supervision or professional tutelage (instruction, guidance, mentoring, review, and critique) from one or more licensed professional engineers. This experience must be verified by one or more licensed professional engineers who are familiar with the applicant's work and can attest that the experience was of the required quality and was accurately described. Verification of the qualifying experience is provided through the reference forms. It is the responsibility of the applicant to provide reference forms to the licensed professional engineers to complete and return directly to the board.

(1) To be readily acceptable, all of the qualifying experience shall be under the direct supervision and tutelage of one or more licensed professional engineers.

(2) To be considered, a portion of the qualifying experience shall be under the direct supervision or tutelage of one or more licensed professional engineers. In this case, the rest of the qualifying experience shall be under the direct supervision or tutelage of an unlicensed graduate engineer.

*b. Documentation of experience.* All applicants must submit references and a work project description. Applicants who did not have all of their qualifying experience under the direct supervision and tutelage of one or more licensed professional engineers (see subparagraph 4.1(3)"a"(2)) must also submit the additional supporting documentation described in subparagraph 4.1(3)"b"(3). The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience acquired by the applicant.

(1) References. An applicant for the Principles and Practice of Engineering examination shall submit five references on forms provided by the board.

1. At least three of the five references shall be from licensed professional engineers.

2. At least one of the licensed professional engineers who provide a reference for the applicant shall have provided direct supervision or professional tutelage in the course of a mentoring relationship on such matters as technical skills; professional development; the exercise of professional judgment, ethics, and standards in the application of engineering principles and in the review of such matters by others; and the professional obligations of assuming responsible charge of professional engineering works and services.

3. At least one reference shall be from a supervisor. If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant. An applicant shall submit supervisor references to verify at least four years of qualifying experience.

4. If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

5. The board reserves the right to contact references, supervisors, or employers for information about the applicant's professional experience and competence or to request additional references.

6. All licensed professional engineers who submit references for an applicant shall be sufficiently familiar with the applicant's work product to formulate credible opinions on the applicant's capacity to assume responsible charge of professional engineering works and services.

7. Applicants who have not been supervised or provided tutelage by a licensed professional engineer for at least four years of qualifying experience shall submit one or more references to verify tutelage by one or more unlicensed graduate engineers, as provided in subparagraph 4.1(3)"a"(2).

8. The board uses references partially as a means of verifying an applicant's record of experience. The applicant must distribute a reference form to individuals who are asked to submit references for the applicant. To each reference form, the applicant shall attach a copy of the portion of the applicant's experience record that is being addressed by the referring individual.

9. An applicant for the Fundamentals of Engineering examination whose engineering degree is not from an ABET/EAC or CEAB accredited engineering program must provide a reference from a supervisor on a form provided by the board.

10. The board may require the applicant to submit additional letters of reference or other evidence of suitable tutelage and supervision.

11. The board may require an oral interview with the applicant or other evidence to verify the applicant's knowledge and experience in the principles and practice of engineering.

12. The board may conduct interviews with persons providing tutelage or supervision to the applicant.

(2) Work project description. An applicant for initial licensure as a professional engineer must include with the application a work project statement describing a significant project on which the applicant worked during the previous 12 months. The board will review all work project statements and will approve only those that include all of the components listed below in paragraphs 4.1(3) “b”(2) “1” to “4” and meet the criteria listed in paragraph 4.1(3) “b”(2) “5.”

1. The statement shall describe the applicant’s degree of responsibility for the project.
2. The statement shall identify the project’s owner and location.
3. The statement shall include the name of the supervisor in charge of the project and, if the supervisor is a professional engineer, the license number of the supervisor.
4. The statement shall be signed and dated by the applicant.
5. Criteria the board shall use in evaluating the acceptability of the project as qualifying experience for the applicant shall include, but not be limited to, the following:
  - The degree to which the project and the experience described have progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
  - The scope and quality of the professional tutelage experienced by the applicant;
  - The technical decisions required of the applicant in the project; and
  - The professional decisions required of the applicant.

(3) Additional supporting documentation. Applicants who did not have all of their qualifying experience under the direct supervision and tutelage of one or more licensed professional engineers (see subparagraph 4.1(3) “a”(2)) must also submit the following additional supporting documentation.

1. Cover letter to the board requesting consideration.
2. Reference from the unlicensed engineer who provided direct supervision or tutelage on forms provided by the board, to include:
  - Assessment of the applicant’s performance, development, integrity, and ability to assume responsible charge.
  - Description of the engineer’s background in education and experience.
  - Nature of the tutelage provided to the applicant.
- c. *Quality.* Qualifying experience shall be of such quality as to demonstrate that the applicant has developed technical skill and initiative in the correct application of engineering principles. Such experience should demonstrate the applicant’s capacity to review the application of these principles by others and to assume responsibility for engineering work of professional character.
- d. *Scope.* Experience shall be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in a basic engineering field, rather than highly specialized skill in a narrow and limited field.

e. *Progression.* The record of experience shall indicate successive and continued progress from initial, subprofessional work of simpler character to recent, professional work of greater complexity and a higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement. In evaluating this progression, the board will consider both subprofessional and professional activity as reported by the applicant. However, only work experience obtained after the applicant’s receipt of the qualifying degree will be considered, except as described in paragraph 4.1(3) “f.” Subprofessional work includes the time spent as an engineering technician, engineering assistant, inspector, or similar under the direct supervision of a licensed professional engineer. Professional work includes the time during which the applicant was occupied in engineering work of higher grade and responsibility than that defined above as subprofessional work. Time spent in teaching engineering subjects in a college or university at the level of assistant professor or higher may be listed as professional work.

f. *Special work experience.* Work experience prior to graduation from college may be accepted toward satisfaction of qualifying experience requirements only as follows: Cooperative work programs administered by engineering colleges and verified on the transcript and internships administered by engineering colleges with a verifying reference from the internship supervisor will be considered as

half-time credit, with a maximum allowance of 6 months (12 months of cooperative work experience or internship) applicable toward the satisfaction of qualifying experience requirements. An applicant's advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

*g. Advanced education.* An applicant who has earned a master of science degree that includes research experience, in addition to writing an associated thesis, from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline and who has fulfilled the requirements for a bachelor of science degree may be granted a maximum of one-half year's experience credit. An applicant who has earned a doctor of philosophy degree from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline may be granted a maximum of one year's experience credit in addition to the one-half year's credit for the master of science degree.

*h. Teaching experience.* Teaching of engineering subjects at the level of assistant professor or higher in an accredited engineering program may be considered as experience, provided the applicant's immediate supervisor is a licensed professional engineer in the jurisdiction in which the college or university is located. If the applicant's immediate supervisor is not a licensed professional engineer, a program of mentoring or peer review by a licensed professional engineer acceptable to the board must be demonstrated. Applicants using teaching or research as experience must have a minimum of four years of acceptable experience in research, industry, or consulting. The board shall consider the complexity of the project(s) presented, the degree of responsibility of the applicant within the project, and other factors the board deems relevant. Academic experience must demonstrate increasing levels of responsibility for the conduct and management of projects involving engineering research, development or application. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

*i. Joint applications.* Applicants requesting licensure both as a professional engineer and a land surveyor must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

*j. Corporate exemption.* The purpose of the provisions on qualifying experience which authorize the board to consider some experience that was not acquired under the direct supervision and tutelage of a licensed professional engineer is to provide a path toward licensure for those applicants who gain experience in settings where licensure is not required under the corporate exemption set forth in Iowa Code section 542B.26 or under similar statutory provisions in other jurisdictions. Such applicants may lawfully gain professional engineering experience under the supervision or tutelage of graduate engineers who are not licensed. To aid such applicants, the following guidelines are provided:

(1) The board shall not consider any experience gained under circumstances where the applicant could not lawfully have practiced professional engineering.

(2) The board shall not consider any experience the applicant may have attained in compliance with the law but that was not under the supervision or tutelage of a graduate engineer. The fundamental purpose of qualifying experience is professionally guided training to expand and complement engineering education. Self-guided experience does not qualify.

(3) Persons who desire licensure as professional engineers who are not directly supervised by licensed professional engineers should form tutelage relationships with licensed professional engineers as early in the process of gaining experience as is feasible. Unlicensed graduate engineers are not authorized to offer professional engineering services to the public or to be in responsible charge of such services; nor are they subject to the examinations required for licensure, the professional and ethical standards applicable to licensees, or the regulatory oversight of a licensing authority. Qualifying experience is intended to address both technical competence and the obligations to the public of a licensed professional engineer.

(4) Because the circumstances of individual applicants in corporate exemption settings are diverse, it is not possible to identify the minimum period of time during which the applicant must receive supervision or tutelage from one or more licensed professional engineers to be eligible for licensure.

The board shall take into consideration both the quantity and quality of such experience. In general, an applicant's exposure to supervision or tutelage by one or more licensed professional engineers should reflect a sustained period of in-depth interaction from which the licensed engineers are in a position to form credible opinions on the applicant's qualifications to be in responsible charge of engineering services offered to the public as a licensed professional engineer.

(5) The burden is on the applicant to demonstrate to the board's satisfaction that the combination of unlicensed and licensed supervision and tutelage satisfies the requirements of qualifying experience described in this rule.

**4.1(4)** Fourth, the applicant must successfully complete the Principles and Practice of Engineering examination.

*a.* To qualify to take this examination, the applicant must present a record of four years or more of practical experience in engineering work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the qualifying education and prior to the application due date for the examination.

*b.* An applicant for the Principles and Practice of Engineering examination shall have a minimum of one year of practical experience in the United States of America or a territory under its jurisdiction.

**4.1(5)** Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be permitted to take either the Fundamentals of Engineering or the Principles and Practice of Engineering examination. Column 1 indicates the years of practical experience required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
If the applicant's educational level is:	1 The applicant must have the following additional years of experience prior to taking the Fundamentals of Engineering examination:	2* The applicant must have the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
A 4-year bachelor's degree in an accredited engineering program	0	4
A 4-year bachelor's degree in mathematics or physical sciences plus a master's degree* in engineering	0	4
A 4-year bachelor's degree in technology or architecture plus a master's degree* in engineering	0	4
A 4-year bachelor's degree in engineering from a nonaccredited engineering program	1	4
A 4-year bachelor's degree in engineering from a nonaccredited engineering program plus a master's degree* in engineering	0	4

\*For purposes of this subrule, an applicant's master's degree in engineering must be from an institution in the United States of America with an accredited bachelor's degree in the same curriculum, and the master's degree candidate must be required to fulfill the requirements for the bachelor's degree in the same area of specialization.

**4.1(6)** Required examinations. All examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. *Fundamentals of Engineering examination (fundamentals examination).* The Fundamentals of Engineering examination is a written examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

b. *Principles and Practice of Engineering examination (professional examination).* The Principles and Practice of Engineering examination is a written examination designed to determine proficiency and qualification to engage in the practice of professional engineering only in a specific branch. The Principles and Practice of Engineering two-module Structural examination is a written examination designed to determine proficiency and qualification to engage in the practice of structural engineering. A separate examination shall be required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering two-module Structural examination.

c. *Passing scores.* The board reviews test results for each examination and determines what level shall constitute a minimum passing score for that examination. In making its determination, the board generally is guided by the passing score recommended by the NCEES. The board fixes the passing score for each examination at a level which it concludes is a reasonable indication of minimally acceptable professional competence.

d. *Reexamination.* An applicant who fails an examination may request reexamination at the next examination period without reapplication to the board. If the applicant intends to retake the examination, the applicant must notify the examination service selected by the board to administer the examinations prior to the application due date for the examination.

e. *Failure to appear.* An applicant who fails to appear for an examination may sit for the examination the next time it is offered without reapplication provided the application will not be more than one year old at the time of the application due date for the examination and the applicant notifies the examination service selected by the board to administer the examinations prior to the application due date for the examination.

f. *Materials permitted in examination room.* For security reasons, applicants shall comply with requirements regarding materials permitted in the examination room as issued by the National Council of Examiners for Engineering and Surveying and provided to candidates prior to the examination.

g. *Release of examination results.* Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

**4.1(7) Examination subversion.** Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of licensure in Iowa, be barred from engineering licensure and examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

a. Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

(1) Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(2) Conduct that violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the administration of the examination; or having in one's possession during the administration of the licensing examination any device or materials that might compromise the security of the examination or examination process, such as calculating and computing devices not on the list of devices approved by the examination provider or provided by the examination provider.

(3) Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination or impersonating an examination candidate or having an impersonator take the licensing examination on one's behalf.

*b.* Any examination candidate who wishes to appeal a decision of the board under this subrule may request a contested case hearing. The request for hearing shall be in writing, shall briefly describe the basis for the appeal, and shall be filed in the board's office within 30 days of the date of the board decision that is being appealed. Any hearing requested under this subrule shall be governed by the rules applicable to contested case hearings under 193—Chapter 7.

[ARC 7753B, IAB 5/6/09, effective 6/10/09; ARC 9285B, IAB 12/15/10, effective 1/19/11; ARC 9286B, IAB 12/15/10, effective 1/19/11; ARC 9288B, IAB 12/15/10, effective 1/19/11; ARC 0362C, IAB 10/3/12, effective 11/7/12; ARC 0684C, IAB 4/17/13, effective 5/22/13; ARC 0779C, IAB 6/12/13, effective 7/17/13; ARC 1349C, IAB 2/19/14, effective 3/26/14; ARC 2388C, IAB 2/3/16, effective 3/9/16]

**193C—4.2(542B) Requirements for licensure by comity.** A person holding a certificate of licensure to engage in the practice of engineering issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and who has met standards determined by the board to be substantially equivalent to those required of applicants for initial licensure in this state may, upon application, be licensed without further examination. When determining whether the licensing standards satisfied by a comity applicant are substantially equivalent to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards satisfied by the comity applicant must accordingly be equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant's superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant's lack of compliance with another prerequisite, such as professional examination. Comity applicants are governed by the same standards as are required of applicants for initial licensure in Iowa.

**4.2(1) References.** An applicant for licensure by comity shall submit references on forms provided by the board to verify at least four years of satisfactory experience after the receipt of the qualifying degree. This experience must be under the supervision of a licensed professional engineer, or the applicant must provide unlicensed tutelage references verifying at least four years of satisfactory engineering experience, as provided in paragraph 4.1(3) "a." The board reserves the right to contact employers for information about the applicant's professional experience and competence.

**4.2(2) Basis for evaluation of applications.** Applications for licensure by comity will be evaluated on the following basis:

*a.* The applicant's record of education, references, practical experience, and successful completion of approved examinations will be reviewed to determine if it currently satisfies the substantive requirements of Iowa Code section 542B.14. In reviewing the education, references, and practical experience of comity applicants, the board will use the same criteria used by the board to determine the eligibility of a candidate for the Principles and Practice of Engineering examination; or

*b.* The applicant's licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements substantially equivalent to those that are required of applicants for initial licensure in Iowa by Iowa Code section 542B.14.

**4.2(3) Evaluation of comity application process.**

*a.* First, the applicant for licensure by comity from a jurisdiction other than Iowa must meet or exceed the education requirements set forth in Iowa Code section 542B.14. In addition, if the applicant did not graduate from an Accreditation Board of Engineering and Technology (ABET)/Engineering Accreditation Commission (EAC) or Canadian Engineering Accreditation Board (CEAB) approved curriculum, the applicant must have completed a year of practical experience satisfactory to the board. This year of experience must be in addition to the four years of practical experience in engineering work as required in paragraph 4.2(3) "d."

*b.* Second, the applicant must have successfully completed the Fundamentals of Engineering examination.

(1) An applicant who graduated from a satisfactory engineering program and who has 25 years or more of work experience satisfactory to the board shall not be required to take the Fundamentals of Engineering examination.

(2) An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, shall not be required to take the Fundamentals of Engineering examination.

*c.* Third, the applicant must have successfully completed the Principles and Practice of Engineering examination.

*d.* Fourth, the applicant must have a record of four years or more of practical experience in engineering work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the appropriate education and must meet the requirements for practical experience found at paragraph 4.1(3)“*a.*”

*e.* While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional engineering in a specific branch of engineering, such as civil, structural, electrical, or mechanical engineering. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews, while valuable for certain purposes, are not equal or superior to NCEES examinations for reasons including the subjective nature of such procedures, lack of verifiable grading standards, and heightened risk of inconsistent treatment.

**4.2(4) Education and experience requirements.**

*a.* For applicants who were originally licensed in a jurisdiction other than Iowa prior to July 1, 1988, the board will employ the following chart to determine if the applicant’s licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant’s original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant’s educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
No post-high school education	8	4
Postsecondary study in mathematics or physical sciences		
One year	7	4
Two years	6	4
Three years	5	4
Four years	3	4
Four-year BS degree in mathematics or physical sciences plus master’s degree in engineering	0	4
Postsecondary study in engineering technology programs and architecture		
One year	7	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
Two years	5.5	4
Three years	4	4
Four-year degree in a nonaccredited engineering technology program or BA in architecture	2.5	4
Four-year degree in an accredited engineering technology program	2	4
Bachelor of architecture, four years or more	2	4
Four-year degree in engineering technology or architecture plus master's degree in engineering	0	4
Postsecondary study in a nonaccredited engineering program		
One year	7	4
Two years	5	4
Three years	3	4
Four-year BS degree	1	4
Four-year degree in a nonaccredited engineering program plus master's degree in engineering	0	4
Postsecondary study in an accredited engineering program		
Two years	6	4
Three years	3	4
Four-year degree in an accredited engineering program	0	4

*b.* For applicants who were originally licensed in another jurisdiction and who meet the requirements of Iowa Code section 542B.14(1)(a)(3), the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)(a)(3)		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
College or junior college (mathematics or physical sciences)		
Two years	6	4
Three years	5	4
Four-year BS degree	3	4
Four-year BS degree plus master's degree in engineering	0	4
All engineering technology programs and architecture		
Two years	6	4
Three years	5	4
Four-year degree, nonaccredited technology or BA in architecture	3	4
Four-year degree, accredited technology	2	4
Four-year degree or more, bachelor of architecture	2	4
Four-year BS degree, technology or architecture plus master's degree in engineering	0	4
Engineering program, nonaccredited		
Two years	6	4
Three years	3	4
Four-year BS degree	1	4
Four-year BS degree plus master's degree in engineering	0	4
Engineering program, accredited		
Two years	6	4
Three years	3	4
Four-year BS degree	0	4

c. For all other applicants who were originally licensed in a jurisdiction other than Iowa on or after July 1, 1988, the board will employ the chart found at subrule 4.1(5) to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those which are required by Iowa Code section 542B.14.

d. For purposes of this subrule, an applicant's master's degree in engineering must be from an institution in the United States of America with an accredited bachelor's degree in the same curriculum, and the master's degree candidate must be required to fulfill the requirements for the bachelor's degree in the same area of specialization.

[ARC 7753B, IAB 5/6/09, effective 6/10/09; ARC 9287B, IAB 12/15/10, effective 1/19/11; ARC 0779C, IAB 6/12/13, effective 7/17/13]

**193C—4.3(542B) Requirements for a licensee requesting additional examination.** A person holding an active certificate of licensure to engage in the practice of engineering issued by the state of Iowa may, upon written request and payment of the application and examination fees, take additional examinations in other branches of engineering without submitting a formal application to the board as described for initial or comity licensure.

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

[Filed 10/24/01, Notice 8/8/01—published 11/14/01, effective 1/1/02]

[Filed 9/12/02, Notice 6/12/02—published 10/2/02, effective 11/6/02]  
[Filed 11/21/02, Notice 10/2/02—published 12/11/02, effective 1/15/03]  
[Filed 4/22/04, Notice 2/4/04—published 5/12/04, effective 6/16/04]  
[Filed 9/22/05, Notice 6/8/05—published 10/12/05, effective 11/16/05]  
[Filed 11/29/06, Notice 8/16/06—published 12/20/06, effective 1/24/07]  
[Filed 11/29/07, Notice 8/15/07—published 12/19/07, effective 1/23/08]  
[Filed 4/25/08, Notice 12/19/07—published 5/21/08, effective 6/25/08]  
[Filed ARC 7753B (Notice ARC 7434B, IAB 12/17/08), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 9285B (Notice ARC 9021B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]  
[Filed ARC 9286B (Notice ARC 9022B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]  
[Filed ARC 9288B (Notice ARC 9024B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]  
[Filed ARC 9287B (Notice ARC 9023B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]  
[Filed ARC 0362C (Notice ARC 0156C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]  
[Filed ARC 0684C (Notice ARC 0530C, IAB 12/12/12), IAB 4/17/13, effective 5/22/13]  
[Filed ARC 0779C (Notice ARC 0603C, IAB 2/20/13), IAB 6/12/13, effective 7/17/13]  
[Filed ARC 1349C (Notice ARC 1254C, IAB 12/25/13), IAB 2/19/14, effective 3/26/14]  
[Filed ARC 2388C (Notice ARC 2219C, IAB 10/28/15), IAB 2/3/16, effective 3/9/16]



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, 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, or in probation or parole violations under Iowa Code chapter 908;
- 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.

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]

**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 Web site address is <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]

[Filed emergency 7/1/93 after Notice 4/14/93—published 7/21/93, effective 7/1/93]

[Filed emergency 1/21/97—published 2/12/97, effective 1/21/97]

[Filed 7/11/97, Notice 4/9/97—published 7/30/97, effective 9/3/97]

[Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]

[Filed emergency 8/5/02—published 9/4/02, effective 8/5/02]

[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]

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 <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 after January 1, 2015, 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.

**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, 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.

**11.3(4)** *Class A and B felonies.* To be eligible to contract to represent indigent persons in Class A and Class B 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 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 and Class B felony cases.

If an attorney satisfies the requirements for 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 of this subrule 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 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 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)** *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.

**11.3(7) 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]

**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.

[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]

[Filed 10/26/99, Notice 6/30/99—published 11/17/99, effective 12/22/99]

[Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]

[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 11/14/07, Notice 10/10/07—published 12/5/07, effective 1/9/08]

[Filed Emergency ARC 8090B, IAB 9/9/09, effective 9/15/09]

[Filed ARC 8372B (Notice ARC 8091B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed Emergency ARC 9293B, IAB 12/29/10, effective 12/7/10]

[Filed ARC 9447B (Notice ARC 9294B, IAB 12/29/10), IAB 4/6/11, effective 5/11/11]

[Filed ARC 1514C (Notice ARC 1438C, 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]

<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; 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]

**493—12.2(13B,815) Submission and payment of attorney claims.**

**12.2(1) Required claim documents.** Court-appointed attorneys shall submit written indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

*a.* A completed fee claim on a form promulgated by the state public defender. 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. The claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>.

*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 e-mail 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. It is permissible to use initials representing the name, so long as an explanation is provided as to the full name for each set of initials with the itemization.

(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 must be typed in at least 10-point type on 8½" × 11" paper.

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 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 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, the date on which the court rules on that motion is the date of service. 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 on which the case was dismissed, 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]

**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 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]

**493—12.4(13B,815) Rate of compensation.** 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, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/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, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/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, 2007:

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

**12.4(1) *Applicability to juvenile cases.*** In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney \$60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

**12.4(2) *Appointments before July 1, 1999.*** In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

**12.4(3) *Applicability to appellate contracts.*** Rescinded IAB 6/25/14, effective 7/30/14.

**12.4(4) *All other cases.*** 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]

#### **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, even if the amount claimed on that claim form is less than 12 hours, a letter specifying the total hours worked for indigent persons, any additional time billed to other private clients on that date or certifying that no other time was billed to any other 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 e-mail 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]

#### **493—12.6(13B,815) Attorney fee limitations.**

**12.6(1) Adult cases.** The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$18,000
Class B felonies	\$3,600
Class C felonies	\$1,800
Class D felonies	\$1,200
Aggravated misdemeanors	\$1,200
Serious misdemeanors	\$600
Simple misdemeanors	\$300
Simple misdemeanor appeals to district court	\$300
Contempt/show cause proceedings	\$300
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$300
Extradition	\$300
Postconviction relief—the greater of \$1,000 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 \$1,200 even if there were more than one separate occurrence. 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.

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 attorney time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,200
Child in need of assistance (CINA) (through disposition)	\$1,200
Termination of parental rights (TPR) (through disposition)	\$1,800
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$180
Juvenile commitment hearings	\$180
Juvenile petition on appeal	\$600
Motion for further review after petition on appeal	\$300

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 \$1,200 for all four proceedings, not \$1,200 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 \$1,200 for the child in need of assistance case and up to \$1,800 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]

#### **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.

(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(4)“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 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 and will be denied.

[ARC 0137C, IAB 5/30/12, effective 7/11/12]

#### **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 39 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.

**12.8(2)** 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 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]

**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 e-mail 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]

These rules are intended to implement Iowa Code chapters 13B and 815.

[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]

[Filed 10/26/99, Notice 6/30/99—published 11/17/99, effective 12/22/99]

[Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]

[Filed emergency 8/5/02—published 9/4/02, effective 8/5/02]

[Filed 1/15/03, Notice 9/4/02—published 2/5/03, effective 3/12/03]

[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 emergency 5/25/05—published 6/22/05, effective 5/25/05]

[Filed 7/27/05, Notice 6/22/05—published 8/17/05, effective 10/15/05]

[Filed emergency 9/6/05—published 9/28/05, effective 9/6/05]

[Filed 11/7/05, Notice 9/28/05—published 12/7/05, effective 1/11/06]

[Filed 1/13/06, Notice 10/26/05—published 2/1/06, effective 3/8/06]

[Filed emergency 5/23/06—published 6/21/06, effective 7/1/06]

[Filed 8/11/06, Notice 6/21/06—published 8/30/06, effective 10/4/06]

[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]

[Filed emergency 6/15/07—published 7/4/07, effective 7/1/07]

[Filed 8/8/07, Notice 7/4/07—published 8/29/07, effective 10/3/07]

[Filed emergency 2/1/08—published 2/27/08, effective 2/1/08]

[Filed 4/3/08, Notice 2/27/08—published 4/23/08, effective 5/28/08]<sup>◇</sup>

[Filed Emergency ARC 8090B, IAB 9/9/09, effective 9/15/09]

[Filed ARC 8372B (Notice ARC 8091B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed Emergency ARC 9293B, IAB 12/29/10, effective 12/7/10]

[Filed ARC 9447B (Notice ARC 9294B, IAB 12/29/10), IAB 4/6/11, effective 5/11/11]

[Filed ARC 9938B (Notice ARC 9817B, IAB 11/2/11), IAB 12/28/11, effective 2/1/12]

[Filed ARC 0137C (Notice ARC 0050C, IAB 3/21/12), IAB 5/30/12, effective 7/11/12]

[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]

<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.* The investigator submits a signed original and one copy of a claim 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 services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

*b.* Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

*c.* 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 but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.
- (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, 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 investigator sets a limit for the claim, this court order is unnecessary.

*d.* Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the case. Claims that are not timely shall be denied.

**13.2(2) Claims for foreign language interpreters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation, effective September 1, 2007, if the following conditions are met:

*a.* The interpreter submits a signed original and one copy of a claim 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 services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are reimbursed pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

2. Claims for translating documents will be paid pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

(4) A court order setting the maximum dollar amount of the claim.

d. Timely claims required. Claims for services are timely if, within 45 days of completion of services, either the claim is submitted to the state public defender for payment or the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services are filed with the clerk of court in the case. Claims that are not timely submitted shall be denied.

**13.2(3) 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. The expert witness submits an original and one copy of a signed claim 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 services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. 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 but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(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(4) 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.* 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; e-mail 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 but the court, in granting authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) Itemization of services. If the transcript is for a deposition, the itemization must include the date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.

(4) If expedited transcript rates are claimed under subparagraph 13.2(4) “d”(10), an e-mail or other written statement from the attorney explaining that expedited delivery is required.

(5) If a cancellation fee is claimed under subparagraph 13.2(4) “d”(6), documentation of the date and time that notice of cancellation was given.

(6) 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(4) "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 e-mail 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 Web site of the state public defender, <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(5) *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.* The person performing the evaluation submits a signed original and one copy of a claim 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 services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

*b.* Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

*c.* 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 but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(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(6) *Submission of claims.*** Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. 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.

**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.

**13.2(8) *Claim form for other professional services.*** Rescinded IAB 1/3/07, effective 2/7/07.  
[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]

**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.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

[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]

[Filed ARC 0137C (Notice ARC 0050C, IAB 3/21/12), IAB 5/30/12, effective 7/11/12]

[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]

<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

## **NATURAL RESOURCES DEPARTMENT[561]**

Created by 1986 Iowa Acts, chapter 1245, section 1802

Rules of divisions under this Department "umbrella" include Energy and Geological Resources[565], Environmental Protection Commission[567], Natural Resource Commission[571], and Preserves, State Advisory Board[575]

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CHAPTER 12  
SPECIAL NONRESIDENT DEER AND TURKEY LICENSES

**561—12.1(483A) Purpose.** These rules establish the process by which the department will issue special nonresident deer and turkey licenses to individuals as part of statewide or local efforts to promote the state and its natural resources.

[ARC 7814B, IAB 6/3/09, effective 7/8/09]

**561—12.2(483A) Definitions.** When used in this chapter:

*“Approved organization”* means an organization that is incorporated under Iowa Code chapter 504 as a nonprofit organization, whose mission involves providing hunting experiences for disabled veterans and military personnel, and that is listed on the IRS exempt organizations list or provides a copy of an IRS determination letter for 501(c) tax-exempt status.

*“Conservation organization”* means an organization that is licensed and managed pursuant to Iowa Code chapter 504, the revised Iowa nonprofit corporation Act, and whose mission emphasizes natural resource conservation or supports science-based natural resource management. A local or state chapter or division of a national or international conservation organization shall qualify as a conservation organization. A person who purchases a deer license from a conservation organization under these rules is not subject to the restriction provided in 12.5(1)“b.”

*“Coordinator”* means the department staff person appointed by the director to administer the process for allocation of special nonresident deer and turkey licenses pursuant to this chapter.

*“Department”* means the department of natural resources.

*“Director”* means the director of the department of natural resources.

*“Internal committee”* means the committee that ranks certain requests for special licenses for consideration by the legislative committee and consists of the coordinator, the administrator of the conservation and recreation division, the chief of the wildlife bureau, and the chief of the law enforcement bureau.

*“Legislative committee”* means the committee that makes the final selection of recipients of special nonresident deer and turkey licenses and consists of the majority leader of the Iowa senate, the speaker of the Iowa house of representatives, and the director of the Iowa department of economic development, or their designees, as described in Iowa Code section 483A.24.

*“Nonresident disabled veteran or disabled member of the armed forces”* means a person who is a veteran and who has an assigned service-related disability rating of 30 percent or more under United States Code, Title 38, Chapter 11; or a person who is a member of the armed forces serving on active federal duty currently participating in the Integrated Disability Evaluation System (IDES).

*“Outdoor industry”* means a commercial enterprise or venture that promotes or otherwise contributes to the use of natural resources. For purposes of illustration, an outdoor industry may include, but is not limited to, a television or radio show production; a video/DVD production; still and motion photography; an article in the popular print media, such as in a newspaper or periodical; a lecture presentation; the manufacture or acquisition of sporting equipment for resale; or a similar activity. A business that solely provides guide or outfitter services is not an outdoor industry.

*“Program”* means the review and selection process through which special nonresident deer and turkey licenses are allocated in accordance with Iowa Code section 483A.24 and these rules.

*“Special licenses”* means the special nonresident deer licenses and special nonresident turkey licenses issued pursuant to these rules.

*“Special nonresident deer license”* means a deer license issued pursuant to Iowa Code section 483A.24(3).

*“Special nonresident turkey license”* means a turkey license issued pursuant to Iowa Code section 483A.24(4).

*“Sponsor”* means an entity that applies on behalf of one or more hunters. Sponsors shall either conduct business in Iowa and be registered with the secretary of state or have some other affiliation with the state of Iowa.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.3(483A) Availability of special licenses.** The program shall be available to provide no more than the number of special licenses allowed by Iowa Code section 483A.24 to nonresidents through requests submitted by individual hunters, through a sponsor, or through an approved organization.  
[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.4(483A) Coordinator duties.** The coordinator of the program shall:

**12.4(1)** Assist the internal and legislative committees in the evaluation and selection of hunters who may receive special licenses.

**12.4(2)** Develop templates for requests for special licenses and provide the templates to hunters, sponsors, and approved organizations upon request.

**12.4(3)** Convene the internal committee to rank hunters according to the criteria in rule 561—12.7(483A).

**12.4(4)** Summarize each request received and distribute the summaries to the internal committee and legislative committee.

**12.4(5)** Provide additional information regarding requesters as needed to aid the legislative committee in the selection process.

**12.4(6)** Establish the date on which applications for special licenses for disabled veterans and disabled active military personnel are due, establish the dates on which the legislative committee will select the conservation organizations and hunters who will receive special licenses, and inform the conservation organizations, the approved organizations and the hunters of their selection.  
[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.5(483A) Request, review, and selection process for promotional special licenses.**

**12.5(1) *Submission of requests.***

*a.* Individual hunters or sponsors shall submit a request, or requests, to the coordinator.

(1) A request for a deer license must be on the form provided by the department and shall be submitted to the coordinator by August 15 prior to the season to be hunted.

(2) A request for a turkey license must be on the form provided by the department and shall be submitted to the coordinator at least 14 days prior to the season to be hunted.

*b.* Applicants will not qualify for a deer license under this rule if they were issued a deer license under this rule the previous year.

*c.* Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule.

**12.5(2) *Review.*** The internal committee shall review the summaries prepared by the coordinator, rank the hunters according to criteria in rule 561—12.7(483A), and forward the rankings to the legislative committee for consideration and final selection. The internal committee shall exercise its discretion and, in addition to the criteria in rule 561—12.7(483A), shall also consider the following:

*a.* Requests that demonstrate little or no promotion of the state of Iowa or its natural resources shall not be included in the rankings forwarded to or considered by the legislative committee.

*b.* Requests from a sponsor, a sponsor-related entity, or hunter that has been found guilty of a game violation in Iowa or elsewhere within the past five years or that, in the opinion of the internal committee, has exhibited poor hunting ethics or judgment shall not be considered for a special license.

*c.* Review of requests shall occur at least once annually but may occur more frequently as needed based upon the number of requests and the dates by which they are received.

**12.5(3) *Selection and payment.*** Upon notice of selection to receive a special license, the sponsor or hunter shall make payment in accordance with rule 561—12.12(483A) to the department through the coordinator. Payment must be made at least 30 days prior to the hunting season for which the license is valid.  
[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.6(483A) Consideration of requests for promotional special licenses.** The internal committee will recommend to the legislative committee which conservation organizations are best qualified to

promote the state and its natural resources. In making recommendations to the legislative committee, the internal committee will base its recommendations on the expected ability of hunters to promote the state and its natural resources and, if applicable, based on the degree of success special license holders have had in previous years or seasons in promoting the state and its natural resources. By way of illustration, the committee may consider requests from the following:

**12.6(1)** A hunter who has a direct beneficial impact on the state through an arm's-length business relationship with an Iowa-based outdoor industry.

**12.6(2)** A conservation organization that will use the special nonresident deer license as a fund-raiser for that organization. A conservation organization shall be limited to one special nonresident deer license per year, whether the organization is a local or state chapter or division of a national or international conservation organization. The organization shall return to the department the greater amount of either one-half of the proceeds from its sale of the special nonresident deer license or the fee for a nonresident deer license as set forth in Iowa Code section 483A.1. The department's proceeds shall cover the cost of the special nonresident deer license. A license made available to a conservation organization in accordance with this subrule may be valid for up to two years after selection of the organization by the legislative committee. The sponsoring conservation organization shall notify the coordinator by July 1 or immediately following the sale of the special nonresident deer license of which year and for what season the special nonresident deer license will be used. The conservation organization shall specifically explain how and during what period the organization will market the special nonresident deer license for auction or some other legal fund-raiser.

**12.6(3)** A hunter nominated by the governor, a member of the Iowa legislature or a member of the legislative committee.

**12.6(4)** A hunter recommended by the department.

**12.6(5)** A hunter who is a well-known public figure nationally or regionally and who may provide a positive portrayal of the state and its natural resources.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

#### **561—12.7(483A) Ranking criteria for promotional special licenses.**

**12.7(1)** The following criteria shall be used by the internal committee to rank individual hunters as identified in subrules 12.6(1), 12.6(4) and 12.6(5). The rankings shall be determined as the average of the following rating points and will be provided to the legislative committee as an aid in determining the selection of hunters.

- a. Five points if the hunter is directly affiliated with an Iowa-based outdoor industry.
- b. From 0 to 10 points for the following:
  - (1) The relative size of the hunter's potential audience.
  - (2) The hunter's proposal to promote the state and its natural resources.
  - (3) If the hunter has received a special license in the past, the value of the actual promotion of the state and its natural resources or special services provided as a result.
- c. From 0 to 5 points if the hunter meets the description in subrule 12.6(5).

**12.7(2)** A conservation organization's request shall be forwarded to the legislative committee if the conservation organization meets the definition in rule 561—12.2(483A) and approval shall be based on evaluation of the organization's prior performance, if any, in selling the special nonresident deer license.

**12.7(3)** Hunters as identified in subrule 12.6(3) shall not be ranked by the internal committee, and their requests will be forwarded to the legislative committee for its determination.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.8(483A) Services provided by recipients of promotional special licenses.** In addition to promoting the state and its natural resources, recipients of special licenses may improve the ranking they receive for future license requests by providing additional services as specified by the department. Services shall be limited to those that improve communications between the department and outdoor recreationalists and to assistance in marketing outdoor recreation and natural resource conservation.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 8753B, IAB 5/19/10, effective 6/23/10; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.9(483A) License term for promotional special licenses.** With the exception of the term provided for in subrule 12.6(2), special licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following allocation of the license.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.10(483A) Reporting by recipients of promotional special licenses.** Within eight months after a hunter's participation in a hunt with a license issued pursuant to this chapter, the sponsor or hunter shall provide to the coordinator information about the hunt to demonstrate how the hunt will provide or has provided promotion of the state and its natural resources. This information may be in the form of testimonials of the participants, a completed DVD available for retail sale, a DVD copy of the actual television broadcast, an article in a periodical, or other verifiable means that demonstrate the promotional benefits. The legislative committee may consider compliance with this reporting requirement in evaluating future requests.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.11(483A) Prohibitions for promotional special licenses.** Photographs, videotapes, or any other form of media resulting from the special licenses issued pursuant to this chapter shall not be used for political campaign purposes.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.12(483A) License costs for promotional special licenses.** With the exception provided in subrule 12.6(2) for conservation organizations, a nonresident who obtains a special license issued pursuant to this chapter shall pay the applicable fee as follows:

**12.12(1)** For a special nonresident deer license, the fee described in Iowa Code section 483A.1 for a deer hunting license, antlered or any sex deer.

**12.12(2)** For a special nonresident turkey license, the fee described in Iowa Code section 483A.1 for a wild turkey hunting license.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.13(483A) Hunter safety requirements for holders of promotional special licenses.** As provided in Iowa Code sections 483A.24(3) and 483A.24(4), the hunter safety and ethics certificate requirement is waived for holders of special licenses issued pursuant to this chapter.

[ARC 7814B, IAB 6/3/09, effective 7/8/09; ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.14(483A) Request, review, and selection processes for special licenses for nonresident disabled veterans or disabled members of the armed forces.**

**12.14(1) Submission of requests.**

*a.* Individual hunters or approved organizations shall submit a request, or requests, to the coordinator.

(1) A request for a deer license must be on the form provided by the department and shall be submitted to the coordinator by August 1 prior to the season to be hunted.

(2) A request for a turkey license must be on the form provided by the department and shall be submitted to the coordinator at least 14 days prior to the season to be hunted.

(3) A request for a regular hunting license that includes the habitat fee must be on the form provided by the department and shall be submitted to the coordinator prior to the seasons to be hunted.

*b.* Applicants will not qualify for a deer or turkey license under this rule if they were issued a deer or turkey license under this rule the previous year. However, if there are unclaimed deer or turkey licenses under this rule, then the coordinator may keep a list of applicants who received licenses the previous year and who apply for the current year, and process those applicants' applications through an electronic, unbiased lottery system to determine the recipients of the unclaimed licenses.

*c.* Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule.

**12.14(2) Review.** After the established deadlines have passed, the coordinator shall review the applications for completeness and shall process the complete applications through an electronic, unbiased lottery system to determine the recipients of the special licenses. The coordinator shall exercise discretion and shall also consider the following:

*a.* Requests from an approved organization or hunter that has been found guilty of a game violation in Iowa or elsewhere shall not be considered for a special license.

*b.* If special licenses are unclaimed after the established deadlines, the coordinator may set new deadlines and inform participating approved organizations that licenses are still available. Applications shall be processed through an electronic, unbiased lottery system to determine the recipients.

**12.14(3) Selection and payment.** Upon notice of selection to receive a special license, the approved organization or hunter shall make payment in accordance with rule 561—12.17(483A) to the department through the coordinator. Payment must be made prior to the hunting season for which the license is valid. [ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.15(483A) License term for disabled veteran and military special licenses.** Special deer or turkey licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following allocation of the license. [ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.16(483A) Prohibitions for disabled veteran and military special licenses.** Photographs, videotapes or any other form of media resulting from the special licenses issued pursuant to this chapter shall not be used for political campaign purposes. [ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.17(483A) License costs for disabled veteran and military special licenses.** A nonresident who obtains a special license issued pursuant to this chapter shall pay the applicable fee as follows:

**12.17(1)** For a special nonresident deer hunting antlered or any sex deer license or a turkey hunting license, the fee described in Iowa Code section 483A.24(5)“c.”

**12.17(2)** For a special nonresident hunting license that includes the wildlife habitat fee, the fee described in Iowa Code section 483A.24(5)“d.” [ARC 2379C, IAB 2/3/16, effective 3/9/16]

**561—12.18(483A) Hunter safety requirements for disabled veterans and military hunters.** As provided in Iowa Code section 483A.24(5), a hunter education certificate is required for holders of special disabled veteran and military licenses issued pursuant to this chapter. [ARC 2379C, IAB 2/3/16, effective 3/9/16]

These rules are intended to implement Iowa Code section 483A.24.

[Filed ARC 7814B (Notice ARC 7652B, IAB 3/25/09), IAB 6/3/09, effective 7/8/09]

[Filed ARC 8753B (Notice ARC 8595B, IAB 3/10/10), IAB 5/19/10, effective 6/23/10]

[Filed ARC 2379C (Notice ARC 2132C, IAB 9/2/15), IAB 2/3/16, effective 3/9/16]



## **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

[Prior to 12/23/92, see Disaster Services Division[607]; renamed Emergency Management Division by  
1992 Iowa Acts, chapter 1139, section 21]

[Prior to 3/31/04, see Emergency Management Division[605]; renamed Homeland Security and Emergency Management  
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*IOWA EMERGENCY RESPONSE  
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## MISSION OF COMMISSION

[Prior to 7/29/87, Natural Resources Department(561) Ch 100]

[Prior to 2/7/90, Public Defense Department(650) Ch 100]

[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

**605—100.1(30) Mission.** The Iowa emergency response commission (IERC) was created to implement the Emergency Planning and Community Right-to-Know Act (EPCRA).

The governor appoints one member each to represent the departments of agriculture and land stewardship, workforce development, homeland security and emergency management, justice, natural resources, public defense, public health, public safety, and transportation, state fire service and emergency response council, local emergency planning committee, hazardous materials task force, and the office of the governor, and three members from private industry.

The IERC shall enter into agreements with the departments of workforce development, natural resources and homeland security and emergency management to carry out the duties allocated to those departments under Iowa Code chapter 30.

This rule is intended to implement Iowa Code chapter 30.

[ARC 2383C, IAB 2/3/16, effective 3/9/16]

[Filed 6/26/87, Notice 5/20/87—published 7/15/87, effective 8/19/87]

[Filed emergency 7/10/87—published 7/29/87, effective 7/17/87]

[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]

[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]

[Filed ARC 2383C (Notice ARC 2284C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]



CHAPTER 101  
OPERATIONS OF COMMISSION  
[Prior to 7/29/87, Natural Resources Department (561) Ch 101]  
[Prior to 2/7/90, Public Defense Department(650) Ch 101]  
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

**605—101.1(17A) Scope.** This chapter governs the conduct of business by the Iowa emergency response commission (IERC).

**605—101.2(30) Membership.** The Iowa emergency response commission is composed of 16 members appointed by the governor.

**101.2(1) *Voting members.*** Members representing the departments of workforce development, natural resources, homeland security and emergency management, public defense, public safety, and transportation, a local emergency planning committee, and one of the private industry representatives, who is designated by the commission at the first meeting of the commission each year, serve as voting members of the commission.

**101.2(2) *Nonvoting members.*** The remaining members of the commission, representing the departments of agriculture and land stewardship, justice, and public health, the state fire service and emergency response council, the Iowa hazardous materials task force, the office of the governor, and two members representing private industry serve as nonvoting, advisory members of the commission. Nonvoting members may fully participate in discussion of matters before the commission, serve on committees formed by the commission and serve as officers of the commission.

[ARC 2384C, IAB 2/3/16, effective 3/9/16]

**605—101.3(17A,21,30) Time of meetings.** The IERC shall meet at least semiannually, at the call of the chairperson, or upon written request of a majority of the members of IERC. The chairperson shall establish the date of all other meetings, and provide notice of all meeting dates, locations, and agenda.

**101.3(1) *Call of the chairperson.*** The chairperson shall notify the IERC of the date, time, and location of all meetings and state the agenda.

**101.3(2) *Request of the IERC.*** The chairperson shall schedule a meeting upon the receipt of a written request from a majority of the members of the IERC. The request shall state the reason for the meeting and the proposed agenda.

**605—101.4(17A,21,30) Place of meetings.** Meetings will generally be held in Des Moines, Iowa. The IERC may meet at other locations. The meeting place and time will be specified in the agenda.

**605—101.5(17A,21,30) Notification of meetings.**

**101.5(1) *Form of notice.*** Notice of meetings is given by posting and distributing the agenda. The agenda lists the time, date, place, and topics to be discussed at the meeting.

**101.5(2) *Posting of agenda.*** The agenda for each meeting will be posted at the office of the chairperson and in the office of the homeland security and emergency management department.

**101.5(3) *Distribution of agenda.*** Agenda will be mailed to anyone who files a request with the chairperson. The request should state whether the agenda for a particular meeting is desired, or whether the agendas for all meetings are desired.

**101.5(4) *Amendment to agenda.*** Any amendments to the agenda after posting and distribution under subrules 101.5(2) and 101.5(3) will be posted, but not distributed. The amended agenda will be posted at least 24 hours prior to the meetings unless, for good cause, notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

**101.5(5) *Supporting material.*** Written materials provided to the IERC with the agenda may be examined and copied. Copies of the materials may be distributed at the discretion of the chairperson to persons requesting the materials. The chairperson may require a fee to cover the reasonable cost to the agency to provide the copies.

[ARC 2384C, IAB 2/3/16, effective 3/9/16]

**605—101.6(17A,21,30) Attendance and participation by the public.**

**101.6(1) Attendance.** All meetings are open to the public. The IERC may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

**101.6(2) Participation.**

*a. Items on agenda.* Persons who wish to address the IERC on a matter on the agenda should notify the chairperson at least three days before the meeting. Presentations to the IERC may be made at the discretion of the chairperson.

*b. Items not on agenda.* Iowa Code section 21.4 requires a commission to give notice of its proposed agenda. Therefore, the IERC discourages persons from raising matters not on the agenda. Persons who wish to address the IERC on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

**101.6(3) Coverage by press.** Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

**605—101.7(17A,21,30) Quorum and voting requirements.**

**101.7(1) Quorum.** Six of the eight voting members of the commission constitute a quorum.

**101.7(2) Majority voting.** All votes shall be determined by a majority of voting members present at a meeting of the commission. A quorum of the commission must be present at the time any vote is taken by the commission.

**101.7(3) Voting procedures.** The chairperson shall rule as to whether the vote will be by voice vote or roll call. A roll call vote shall be taken anytime a voice vote is not unanimous. Minutes of the commission shall indicate the vote of each member.

[ARC 2384C, IAB 2/3/16, effective 3/9/16]

**605—101.8(17A,21,30) Minutes, transcripts and recording of meetings.**

**101.8(1) Recordings.** The chairperson shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

**101.8(2) Transcripts.** Transcripts of meetings will not routinely be prepared. The chairperson will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

**101.8(3) Minutes.** The chairperson shall record minutes of each meeting. Minutes shall be reviewed, approved, and maintained by the IERC. The approved minutes shall be signed by the chairperson.

**605—101.9(17A,21,30) Officers and election.**

**101.9(1) Officers.** The officers of the IERC are the chairperson and vice chairperson.

**101.9(2) Elections.** Election of officers shall take place at the first commission meeting held each calendar year. If an officer does not serve out the elected term, a special election shall be held at the first meeting held after notice is provided to the commission to elect a member to serve out the remainder of the term.

These rules are intended to implement Iowa Code chapter 30.

[Filed emergency 5/1/87—published 6/3/87, effective 5/1/87]<sup>1</sup>

[Filed 6/26/87, Notice 5/20/87—published 7/15/87, effective 8/19/87]

[Filed emergency 7/10/87—published 7/29/87, effective 7/17/87]

[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]

[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]

[Filed emergency 12/7/00—published 12/27/00, effective 12/27/00]

[Filed 3/9/01, Notice 12/27/00—published 4/4/01, effective 5/9/01]

[Filed ARC 2384C (Notice ARC 2283C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]

<sup>1</sup> Published under Executive Department, IAB 5/20/87

CHAPTER 103  
LOCAL EMERGENCY PLANNING COMMITTEES

[Prior to 2/7/90, Public Defense Department(650) Ch 103]

[Prior to 12/23/92, Disaster Services Division(607) Ch 103]

**605—103.1(30) Requirement to appoint local emergency planning committees (LEPC).**

**103.1(1) Purpose.** The Iowa emergency response commission (IERC) is required to appoint members to local emergency planning committees. An LEPC is appointed for each of the emergency planning districts established in 605—Chapter 102.

**103.1(2) Representation.** As a minimum, each LEPC should be comprised of a representative from each of the following groups or organizations:

- a. Elected state and local officials,
- b. Law enforcement personnel,
- c. Civil defense personnel,
- d. Firefighting personnel,
- e. First-aid personnel,
- f. Health personnel,
- g. Local environmental personnel,
- h. Hospital personnel,
- i. Transportation personnel,
- j. Broadcast and print media,
- k. Community groups, and
- l. Owners and operators of facilities subject to the requirements of EPCRA.

A person may represent one or more of the disciplines listed, provided they are duly appointed by each group or organization to be represented.

[ARC 2385C, IAB 2/3/16, effective 3/9/16]

**605—103.2(30) Committee members.**

**103.2(1) Appointment of local emergency planning committees.** Nominations to the LEPC shall be made by the local emergency management commission, established under Iowa Code section 29C.9, and shall be subject to review and appointment by the IERC. To the extent possible, membership of the LEPC shall be composed of members of the local emergency management commission. Vacancies on the LEPC shall be filled in accordance with this subrule.

**103.2(2) Meeting participation.** Any member of the local emergency management commission may participate in any meeting of the LEPC. If the local emergency management commission member is not the appointed representative of one of the groups or organizations specified in subrule 103.1(2), the local emergency management commission member shall not be eligible to vote on any issue before the LEPC.

**103.2(3) Member changes.** The IERC may revise the appointments made as it deems appropriate. Interested persons may petition the IERC to modify the membership of an LEPC.

[ARC 2385C, IAB 2/3/16, effective 3/9/16]

**605—103.3(30) Local emergency planning committee (LEPC) duties.**

**103.3(1)** The LEPC shall establish procedures for the functioning of the committee to include:

- a. The length of terms of the LEPC members and the selection of a chair and vice-chair;
- b. The public notification of committee activity (42 U.S.C. 11001(c));
- c. The conduct of public meetings to discuss the emergency plan (Iowa Code chapter 21, 42 U.S.C. 11001(c)); and
- d. The procedures for receiving and responding to public comments; and the distribution of emergency plans. (42 U.S.C. 11001(c))

**103.3(2)** The LEPC shall establish procedures for receiving and processing requests from the public for information under EPCRA Section 324, including Form Tier II information under EPCRA Section 312. (42 U.S.C. 11001(c))

**103.3(3)** The LEPC shall designate a 24-hour emergency contact point(s) for the immediate receipt of chemical release notifications. (42 U.S.C. 11003(c)(3))

**103.3(4)** The LEPC shall designate an official to respond to requests for information from the public for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms. The information, including minutes of the LEPC and related committee actions shall be available to the public during normal working hours at a location designated by the LEPC. (42 U.S.C. 11044(a))

**103.3(5)** The LEPC shall prepare an emergency plan for the district and shall review and revise as necessary the emergency plan at least annually. Both the initial emergency plan and any updates or revisions shall be submitted by the LEPC to the IERC in accordance with subrule 103.4(2). (42 U.S.C. 11003(a), 42 U.S.C. 11003(e))

**103.3(6)** The LEPC shall evaluate the need for resources in the district necessary to develop, implement, and exercise the emergency plan(s) and make recommendations. (42 U.S.C. 11003(b))

**103.3(7)** The LEPC shall maintain a current listing of the emergency coordinators designated by each covered facility. (42 U.S.C. 11003(d)(1))

**103.3(8)** The LEPC shall receive, review and act upon information updates from covered facilities regarding emergency planning.

**103.3(9)** The LEPC shall annually publish notice that emergency response plan, material safety data sheets, and inventory forms have been submitted and how the public can obtain access to the material for review. (42 U.S.C. 11044(b))

[ARC 2385C, IAB 2/3/16, effective 3/9/16]

**605—103.4(30) Emergency response plan development.** The IERC recognizes that emergency planning includes more than chemical release planning. The chemical release planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the local emergency management commission as required by Iowa Code chapter 29C and planning standards of the Iowa homeland security and emergency management department.

[ARC 2385C, IAB 2/3/16, effective 3/9/16]

**605—103.5(30) Local emergency planning committee office.** The LEPC shall designate a local government office that will serve as the focal point for receiving nonemergency notifications from facilities that are subject to the law. This office shall also be the depository for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms and a point of contact for the public regarding community right-to-know inquiries, and the office of record for minutes of the LEPC meetings and related committee actions.

**605—103.6(30) Local emergency response committee meetings.** The LEPC shall meet as frequently as deemed necessary by the chair until the local emergency operations plan is developed and concurred by the joint administration and reviewed by the IERC. Subsequent to plan approval, the LEPC is required to meet at least annually to review emergency response procedures, emergency plans and ensure the actions required are properly administered within the local emergency planning district.

**605—103.7(30) Local emergency response plan submission.** After completion of the initial emergency response plan and any subsequent revisions thereto, the LEPC shall submit a copy to the IERC. The IERC shall review the submission and make recommendations to the LEPC on appropriate revisions that may be necessary to comply with provisions in 42 U.S.C. 11003(c) and state planning standards in 605—Chapter 7 to ensure coordination with emergency response plans of other emergency planning districts, the state of Iowa, and adjacent states. To the maximum extent practicable, the review shall not delay implementation of the plan or revisions thereto. All plans shall be submitted annually by October 17.

[ARC 2385C, IAB 2/3/16, effective 3/9/16]

These rules are intended to implement Iowa Code chapter 30.

[Filed emergency 8/17/87—published 9/9/87, effective 8/17/87]

[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]

[Filed 10/25/91, Notice 8/7/91—published 11/13/91, effective 1/1/92]

[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]

[Filed ARC 2385C (Notice ARC 2282C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]



CHAPTER 104  
REQUIRED REPORTS AND RECORDS

**605—104.1(30) Department of homeland security and emergency management.**

**104.1(1) *Emergency planning notification.*** The owner or operator of each facility subject to the planning notification requirement shall notify the homeland security and emergency management department that the facility is subject to the requirements of Section 302, Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11002. The notification is to be on the Tier II form specified in subrule 104.2(4). The facility owner or operator shall submit the notification to the department of natural resources by March 1 for covered chemicals in its possession. If the facility is reporting chemicals to the department of natural resources on the Tier II form pursuant to subrule 104.2(4), a duplicate report is not required. The report shall be revised by a notification on the Tier II form within 60 days after the acquisition of chemicals meeting the notification requirements and reported to the homeland security and emergency management department.

**104.1(2) *Plan development.*** Each local emergency planning committee (LEPC) shall prepare a comprehensive emergency response plan(s) pursuant to 42 U.S.C. 11033 which shall become an integrated portion of the emergency plan established by the joint administration. Where a local emergency planning district exceeds the jurisdictional boundaries of a single joint administration, a comprehensive emergency response plan shall be developed for each joint administration at least annually. The plan shall be reviewed and revised as necessary. The joint administration shall not change the plan without the approval of the LEPC.

**104.1(3) *Submissions.*** Plans and notifications required under this rule shall be submitted to the Homeland Security and Emergency Management Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324.

This rule is intended to implement Iowa Code sections 30.5 and 30.9.  
[ARC 2386C, IAB 2/3/16, effective 3/9/16]

**605—104.2(30) Department of natural resources.**

**104.2(1) *Emergency notifications of releases.*** Each release subject to the requirements of Section 304, Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11004, shall be submitted to the department of natural resources. This notification shall be done in conjunction with the notification required by 567—131.2(455B). Notifications of release shall be telephoned to the department at (515)725-8694 immediately. A written follow-up emergency notice shall be made within 30 days.

**104.2(2) *Toxic chemical release form.*** The owner or operator of a facility subject to the requirements of Section 313, Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11023, shall submit information required by EPA regulations to the department of natural resources. The information for the previous calendar year shall be submitted by July 1 of the following year.

**104.2(3) *Safety data sheet information.*** The owner or operator of a facility required to prepare or have available a safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit a list of each chemical required to be submitted under Section 311, Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11021. The list shall be submitted to the department of natural resources and to the appropriate local emergency planning committee (LEPC) and the fire department in whose jurisdiction the facility is located. The submission of safety data sheets in lieu of a list is not permitted. A form is not designated.

**104.2(4) *Emergency and hazardous chemical inventory form (Tier II).*** The owner or operator of a facility required to prepare or have available a safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit emergency and hazardous chemical inventory information required to be submitted under Section 312, Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11022. The information shall be submitted to the department of natural resources, the appropriate local emergency planning committee (LEPC), and the fire department within whose jurisdiction the facility is located by March 1 for the chemicals in its inventory the preceding calendar year. Tier I forms will not be accepted. The information

shall be submitted on the Iowa Tier II form or in any electronic format approved by the department of natural resources.

**104.2(5) Submissions.** Written notifications and reports required under this rule shall be submitted to the Department of Natural Resources, 7900 Hickman Road, Suite 200, Windsor Heights, Iowa 50324. For additional information, see rule 567—131.2(455B).

This rule is intended to implement Iowa Code sections 30.5 and 30.8.  
[ARC 2386C, IAB 2/3/16, effective 3/9/16]

**605—104.3(30) Department of employment services, labor services division.** Rescinded IAB 2/13/08, effective 3/19/08.

[Filed 10/25/91, Notice 8/7/91—published 11/13/91, effective 1/1/92]

[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]

[Filed 1/18/08, Notice 12/5/07—published 2/13/08, effective 3/19/08]

[Filed ARC 2386C (Notice ARC 2281C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]

CHAPTER 7  
IMMUNIZATION AND IMMUNIZATION EDUCATION: PERSONS ATTENDING ELEMENTARY  
OR SECONDARY SCHOOLS, LICENSED CHILD CARE CENTERS OR INSTITUTIONS OF  
HIGHER EDUCATION

[Prior to 7/29/87, Health Department[470]]

**641—7.1(139A) Definitions.**

*“Admitting official”* means the superintendent of schools or the superintendent’s designated representative if a public school; if a nonpublic school or licensed child care center, the governing official of the school or child care center.

*“Advanced registered nurse practitioner”* or *“ARNP”* means an advanced registered nurse practitioner as defined in 655—7.1(152).

*“Applicant”* means any person seeking enrollment in a licensed child care center or elementary or secondary school.

*“Certified medical assistant”* means a person who is certified to practice as a certified medical assistant following completion of a postsecondary medical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools and successful completion of the certification examination and who is directed by a supervising physician, physician assistant, or nurse practitioner.

*“Competent private instruction”* means private instruction as defined by the department of education pursuant to Iowa Code section 299A.1.

*“Department”* means the Iowa department of public health.

*“Electronic signature”* means a confidential personalized digital key, code, or number that is used for secure electronic data transmission and that identifies and authenticates the signatory.

*“Elementary school”* means kindergarten if provided, and grades one through eight or grades one through six when grades seven and eight are included in a secondary school.

*“Enrolled user”* means a user of the registry who has completed an enrollment form that specifies the conditions under which the registry can be accessed and who has been issued an identification code and password by the department.

*“Health screening”* means a vision screen, dental screen, or refugee health screen.

*“Immunization registry”* or *“registry”* means the database and file server maintained by the department as well as the software application that allows enrolled users to exchange immunization or health screening records.

*“Institution of higher education”* means a postsecondary school.

*“Licensed child care center”* means a facility or program licensed by the Iowa department of human services to provide child care for seven or more children or a prekindergarten or preschool, regardless of the source of funding, operated by a local school district, an accredited nonpublic school, an area education agency, or a college or university.

*“Nurse”* means a person licensed to practice as a nurse pursuant to Iowa Code chapter 152.

*“On-campus residence hall or dormitory”* means campus housing for students that is owned or leased by the institution of higher education and located on a recognized campus site.

*“Physician”* means a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148.

*“Physician assistant”* means a person licensed to practice as a physician assistant pursuant to Iowa Code chapter 148C.

*“Postsecondary school”* means a postsecondary institution under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9, subsection 1.

*“Postsecondary student”* means a person who has officially registered with a postsecondary school, as determined by the school, and who physically attends class on the school’s campus. For purposes of these rules, “postsecondary student” does not include a person who is exclusively registered in a correspondence course or continuing education class or who attends class exclusively by means of the

Internet or the Iowa communications network or through other means which do not require the person's physical presence on the school's campus.

*"Provisional enrollment"* means enrollment for a period of time not to exceed the limit specified in subrule 7.7(2) to allow the applicant to meet the requirements of these rules. A provisionally enrolled applicant is entitled access to all the benefits, activities, and opportunities of the school or licensed child care center. Provisional enrollment shall not deny the school funding for the applicant.

*"Screening provider"* means an ophthalmologist, optometrist, pediatrician, physician, free clinic, child care center, local public health department, public or accredited nonpublic school, community-based organization, advanced registered nurse practitioner (ARNP), physician assistant, dentist or dental hygienist.

*"Secondary school"* means (a) a junior high school comprising grades 7, 8 and 9, and a senior high school; (b) a combined junior-senior high school comprising grades 7 through 12; (c) a junior high school comprising grades 7 and 8 and a high school comprising grades 9 through 12; (d) a high school comprising grades 9 through 12.

*"Signature"* means an original signature or the authorized use of a stamped signature or electronic signature.

*"Student"* means an individual who is enrolled in a licensed child care center, elementary school or secondary school.

[ARC 0481C, IAB 12/12/12, effective 1/16/13; ARC 1477C, IAB 6/11/14, effective 7/16/14; ARC 2390C, IAB 2/3/16, effective 3/9/16]

**641—7.2(139A) Persons included.** The immunization requirements specified elsewhere in these rules apply to all persons enrolled or attempting to enroll in a licensed child care center or a public or nonpublic elementary or secondary school in Iowa including those who are provided competent private instruction.

**641—7.3(139A) Persons excluded.** Exclusions to these rules are permitted on an individual basis for medical and religious reasons. Applicants approved for medical or religious exemptions shall submit to the admitting official a valid Iowa department of public health certificate of immunization exemption.

**7.3(1)** To be valid, a certificate of immunization exemption for medical reasons shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) exempted, and an expiration date (if applicable) and shall bear the signature of a physician, nurse practitioner, or physician assistant. A medical exemption may be granted to an applicant when, in the opinion of a physician, nurse practitioner, or physician assistant:

*a.* The required immunizations would be injurious to the health and well-being of the applicant or any member of the applicant's family or household. In this circumstance, a medical exemption may apply to a specific vaccine(s) or all required vaccines. If, in the opinion of the physician, nurse practitioner, or physician assistant issuing the medical exemption, the exemption should be terminated or reviewed at a future date, an expiration date shall be recorded on the certificate of immunization exemption; or

*b.* Administration of the required vaccine would violate minimum interval spacing. In this circumstance, an exemption shall apply only to an applicant who has not received prior doses of the exempted vaccine. An expiration date, not to exceed 60 calendar days, and the name of the vaccine exempted shall be recorded on the certificate of exemption.

**7.3(2)** A religious exemption may be granted to an applicant if immunization conflicts with a genuine and sincere religious belief.

*a.* To be valid, a certificate of immunization exemption for religious reasons shall contain, at a minimum, the applicant's last name, first name, and date of birth and shall bear the signature of the applicant or, if the applicant is a minor, of the applicant's parent or guardian and shall attest that immunization conflicts with a genuine and sincere religious belief and that the belief is in fact religious and not based merely on philosophical, scientific, moral, personal, or medical opposition to immunizations.

*b.* The certificate of immunization exemption for religious reasons is valid only when notarized.

**7.3(3)** Medical and religious exemptions under this rule do not apply in times of emergency or epidemic as determined by the state board of health and declared by the director of public health.

**641—7.4(139A) Required immunizations.**

7.4(1) Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements below:

**IMMUNIZATION REQUIREMENTS**

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

Institution	Age	Vaccine	Total Doses Required
Licensed Child Care Center	Less than 4 months of age	This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. Routine vaccination begins at 2 months of age.	
	4 months through 5 months of age	Diphtheria/Tetanus/Pertussis	1 dose
		Polio	1 dose
		<i>haemophilus influenzae</i> type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses; or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
	19 months through 23 months of age	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
<i>haemophilus influenzae</i> type B		3 doses, with the final dose in the series received on or after 12 months of age, or 1 dose received when the applicant is 15 months of age or older.	
Pneumococcal		4 doses; or 3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.	
Measles/Rubella <sup>1</sup>		1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.	
24 months and older	Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.	
	Diphtheria/Tetanus/Pertussis	4 doses	
	Polio	3 doses	
	<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age; or 1 dose received when the applicant is 15 months of age or older. Hib vaccine is not indicated for persons 60 months of age or older.	
	Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 2 doses before 12 months of age; or 2 doses if the applicant received 1 dose before 12 months of age or received 1 dose between 12 and 23 months of age; or 1 dose if no doses had been received prior to 24 months of age. Pneumococcal vaccine is not indicated for persons 60 months of age or older.	
	Measles/Rubella <sup>1</sup>	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.	
Elementary or Secondary School (K-12)	4 years of age and older	Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.
		Diphtheria/Tetanus/Pertussis <sup>4, 5</sup>	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or before September 15, 2000 <sup>2</sup> ; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2000, but before September 15, 2003 <sup>2</sup> ; or 5 doses with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or after September 15, 2003 <sup>2, 3</sup> ; and 1 time dose of tetanus/ diphtheria/acellular pertussis-containing vaccine (Tdap) for applicants in grades 7 and above, if born on or after September 15, 2000; regardless of the interval since the last tetanus/diphtheria containing vaccine.
		Polio <sup>7</sup>	3 doses, with at least 1 dose received on or after 4 years of age if the applicant was born on or before September 15, 2003; or 4 doses, with at least 1 dose received on or after 4 years of age if the applicant was born after September 15, 2003. <sup>6</sup>
		Measles/Rubella <sup>1</sup>	2 doses of measles/rubella-containing vaccine; the first dose shall have been received on or after 12 months of age; the second dose shall have been received no less than 28 days after the first dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Hepatitis B	3 doses if the applicant was born on or after July 1, 1994.
Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born before September 15, 2003, unless the applicant has had a reliable history of natural disease; or 2 doses received on or after 12 months of age if the applicant was born on or after September 15, 2003, unless the applicant has a reliable history of natural disease. <sup>8</sup>		

<sup>1</sup> Mumps vaccine may be included in measles/rubella-containing vaccine.

<sup>2</sup> DTap is not indicated for persons 7 years of age or older, therefore, a tetanus-and diphtheria-containing vaccine should be used.

<sup>3</sup> The 5<sup>th</sup> dose of DTap is not necessary if the 4<sup>th</sup> dose was administered on or after 4 years of age.

<sup>4</sup> Applicants 7 through 16 years of age who received their 1<sup>st</sup> dose of diphtheria/tetanus/pertussis-containing vaccine before 12 months of age should receive a total of 4 doses, with one of those doses administered on or after 4 years of age.

<sup>5</sup> Applicants 7 through 18 years of age who received their 1<sup>st</sup> dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one of those doses administered on or after 4 years of age.

<sup>6</sup> If an applicant received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4<sup>th</sup> dose is not necessary if the 3<sup>rd</sup> dose was administered on or after 4 years of age.

<sup>7</sup> If both OPV and IPV were administered as part of the series, a total of 4 doses are required, regardless of the applicant's current age.

<sup>8</sup> Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2<sup>nd</sup> dose if administered 28 days or greater from the 1<sup>st</sup> dose. Administer 2 doses of varicella vaccine to applicants 13 years of age or older at least 4 weeks apart. The minimum interval between the 1<sup>st</sup> and 2<sup>nd</sup> dose of varicella for an applicant 13 years of age or older is 28 days.

**7.4(2)** Vaccine doses administered less than or equal to 4 days before the minimum interval or age shall be counted as valid. Doses administered greater than or equal to 5 days earlier than the minimum interval or age shall not be counted as valid doses and shall be repeated as appropriate.

**7.4(3)** For vaccine administration, the minimum age and intervals recommended by the advisory committee on immunization practices shall be followed.

[**ARC 8377B**, IAB 12/16/09, effective 11/18/09; **ARC 8658B**, IAB 4/7/10, effective 5/12/10; **ARC 0481C**, IAB 12/12/12, effective 1/16/13; **ARC 0586C**, IAB 2/6/13, effective 1/16/13]

**641—7.5(139A) Required education.** Each institution of higher education that has an on-campus residence hall or dormitory shall provide vaccination information on meningococcal disease to each postsecondary student enrolled in the institution of higher education. Meningococcal disease information shall be contained on student health forms. For purposes of this rule, student health form(s) means a document(s) prepared by an institution of higher education that contains, at a minimum, information on meningococcal disease, vaccination information and any recommendations issued by the national Centers for Disease Control and Prevention regarding meningococcal disease. The student health form(s) shall also include space for the postsecondary student to indicate whether or not the postsecondary student has received vaccination against meningococcal disease, including, at a minimum, the date of vaccination. The student health form(s) shall also include space for the postsecondary student to indicate whether or not the postsecondary student has received information on meningococcal disease and benefits of vaccine. If a traditional student health form is not utilized by the institution of higher education, any document(s) containing the above information is acceptable.

**641—7.6(139A) Proof of immunization.**

**7.6(1)** A valid Iowa department of public health certificate of immunization shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. To be valid, the certificate shall be the certificate of immunization issued by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant. A faxed copy, photocopy, or electronic copy of the valid certificate is acceptable. The judgment of the adequacy of the applicant's immunization history should be based on records kept by the person signing the certificate of immunization or on that person's personal knowledge of the applicant's immunization history, or comparable immunization records from another person or agency, or an international certificate of vaccination, or the applicant's personal health records. If personal health records are used to make the judgment, the records shall include the vaccine(s) administered and the date given. Persons validating the certificate of immunization are not held responsible for the accuracy of the information used to validate the certificate of immunization if the information is from sources other than their own records or personal knowledge.

**7.6(2)** Persons wishing to enroll who do not have a valid Iowa department of public health certificate of immunization available to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant to obtain a valid certificate.

**641—7.7(139A) Provisional enrollment.**

**7.7(1)** A valid Iowa department of public health provisional enrollment certificate shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. Applicants who have begun but not completed the required immunizations may be granted provisional enrollment. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. A transfer student is an applicant seeking enrollment from one United States elementary or secondary school into another. To be valid, the certificate shall be the certificate of immunization issued by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by

the department. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, the remaining vaccine(s) required, the reason that the applicant qualifies for provisional enrollment, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant. Persons validating the provisional certificate of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge. Persons signing the provisional certificate of immunization shall certify that they have informed the applicant or, if the applicant is a minor, the applicant's parent or guardian of the provisional enrollment requirements.

*a.* Any applicant seeking provisional enrollment who does not have a valid Iowa department of public health provisional certificate of immunization to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant to obtain a valid certificate.

*b.* Reserved.

**7.7(2)** The amount of time allowed for provisional enrollment shall be as soon as medically feasible but shall not exceed 60 calendar days. The period of provisional enrollment shall begin on the date the provisional certificate is signed. The person signing the provisional certificate shall assign an expiration date to the certificate and shall indicate the remaining immunizations required to qualify for a certificate of immunization.

**7.7(3)** The applicant or parent or guardian shall ensure that the applicant receive the necessary immunizations during the provisional enrollment period and shall submit a certificate of immunization to the admitting official by the end of the provisional enrollment period.

**7.7(4)** Rescinded IAB 12/3/08, effective 1/7/09.

**7.7(5)** If at the end of the provisional enrollment period the applicant or parent or guardian has not submitted a certificate of immunization, the admitting official shall immediately exclude the applicant from the benefits, activities, and opportunities of the school or licensed child care center until the applicant or parent or guardian submits a valid certificate of immunization.

**7.7(6)** If at the end of the provisional enrollment period the applicant has not completed the required immunizations due to minimum interval requirements, a new Iowa department of public health provisional certificate of immunization shall be submitted to the admitting official. The admitting official must maintain all issued certificates of provisional immunization with the original provisional certificate until the applicant submits a certificate of immunization.

[ARC 0481C, IAB 12/12/12, effective 1/16/13]

#### **641—7.8(139A) Records and reporting.**

**7.8(1)** It shall be the duty of the admitting official of a licensed child care center or elementary or secondary school to ensure that the admitting official has a valid Iowa department of public health certificate of immunization, certificate of immunization exemption, or provisional certificate of immunization on file for each student.

*a.* The admitting official shall keep the certificates on file in the school or licensed child care center in which the student is enrolled and assist the student or parent or guardian in the transfer of the certificate to another school or licensed child care center upon the transfer of the student to another school or licensed child care center.

*b.* Unless otherwise requested by the applicant, or parent or guardian, the admitting official shall retain the Iowa department of public health certificate of immunization, or certificate of immunization exemption, or provisional certificate of immunization for three years commencing upon the transfer or graduation of the applicant or the school may choose to provide the permanent immunization record to the student at time of graduation. Included with the immunization record a letter should state that this is an important document that will be needed by the student for college or employment and should be permanently retained.

**7.8(2)** It shall be the duty of the local boards of health to audit the Iowa department of public health certificates of immunization, certificates of immunization exemption, and provisional certificates of immunization in the schools within their jurisdiction to determine compliance with Iowa Code section

139A.8. The local boards of health shall furnish the Iowa department of public health within 60 days of the first official day of school a report of the audit. The report shall be submitted for each school within the local board of health's jurisdiction and shall include the enrollment by grade, and the number of Iowa department of public health certificates of immunization, certificates of immunization exemption, and provisional certificates of immunization by grade.

**7.8(3)** The local board of health and the Iowa department of public health shall have the right to have access to the Iowa department of public health certificates of immunization, certificates of immunization exemption, and the provisional certificates of immunization of children enrolled in elementary and secondary schools and licensed child care centers within the constraints of the privacy rights of parents and students.

**7.8(4)** The admitting official of an institution of higher education shall provide to the department of public health by December 1 each year aggregate data regarding compliance with Iowa Code section 139A.26. The data shall be forwarded to the department within 30 days. The data shall include, but not be limited to, the total number of incoming postsecondary freshmen students living in a residence hall or dormitory who have:

- a. Enrolled in the institution of higher education; and
- b. Been provided information on meningococcal disease; and
- c. Been immunized with meningococcal vaccine.

**641—7.9(139A) Providing immunization services.** It shall be the duty of the local boards of health to provide immunization services where no local provision exists for the services.

**641—7.10(139A) Compliance.** Applicants not presenting proper evidence of immunization, or exemption, are not entitled to enrollment in a licensed child care center or elementary or secondary school under the provisions of Iowa Code section 139A.8. It shall be the duty of the admitting official to deny enrollment to any applicant who does not submit proper evidence of immunization according to rule 641—7.6(139A) and to exclude a provisionally enrolled applicant in accordance with rule 641—7.7(139A).

**641—7.11(22) Statewide registry.**

**7.11(1) Statewide registry.** The department shall maintain a statewide immunization and health screening registry. Enrolled users are responsible for purchasing and maintaining all computer hardware related to use of the registry and for providing an Internet connection to transfer information between the user's computer and the registry.

**7.11(2) Purpose and permitted uses of registry.**

- a. The registry shall contain immunization and health screening information, including identifying and demographic data, to allow enrolled users to maintain and access a database of immunization and health screening histories for purposes of ensuring that patients are fully immunized and screened.
- b. The registry may be used to track inventory or utilization of pharmaceutical agents identified by the department to prepare for or respond to an emergency event.
- c. Enrolled users shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purpose other than those expressly provided in this rule.
- d. The registry shall contain health screening data, including screening results and follow-up information.

**7.11(3) Release of information to the registry.** Enrolled users shall provide immunization and health screening information, including identifying and demographic data, to the registry. Information provided may include, but is not limited to, the following:

- a. Name of patient;
- b. Gender of patient;
- c. Date of birth;
- d. Race;

- e. Ethnicity;
- f. Birth state and birth country;
- g. Address;
- h. Parents' names;
- i. Mother's maiden name;
- j. Type of vaccination administered;
- k. Dose or series number of vaccine;
- l. Date vaccination was administered;
- m. Lot number;
- n. Date of health screening;
- o. Health screening results;
- p. Source of health screening;
- q. Health screening follow-up information;
- r. Patient comments;
- s. Provider name, license, and business address; and
- t. Patient history, including previously unreported doses.

**7.11(4) Confidentiality of registry information.** Immunization and health screening information, including identifying and demographic data maintained on the registry, is confidential and may not be disclosed except under the following limited circumstances:

- a. The department may release information from the registry to the following:
  - (1) The person or the parent or legal guardian of the person immunized or screened.
  - (2) Enrolled users of the registry who have completed an enrollment form that specifies the conditions under which the registry can be accessed and who have been issued an organization code and user name by the department;
  - (3) Persons or entities requesting immunization or health screening data in an aggregate form that does not identify an individual either directly or indirectly.
  - (4) Agencies that complete an agreement with the department which specifies conditions for access to registry data and how that data will be used. Agencies shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purposes other than those expressly provided in this rule.
  - (5) A representative of a state or federal agency, or entity bound by that state or federal agency, to the extent that the information is necessary to perform a legally authorized function of that agency or the department. The state or federal agency is subject to confidentiality regulations that are the same as or more stringent than those in the state of Iowa. State or federal agencies shall not use information obtained from the registry to market services to patients or nonpatients, to assist in bill collection services, or to locate or identify patients or nonpatients for any purposes other than those expressly provided in this rule.
  - (6) The admitting official of a licensed child care center, elementary school, secondary school, or postsecondary school; or medical or health care providers providing continuity of care.
  - (7) Enrolled users from other states or jurisdictions who have signed and completed enrollment in the state's or jurisdiction's immunization registry.

b. Enrolled users shall not release data obtained from the registry except to the person or the parent or legal guardian of the person immunized or screened, admitting officials of licensed child care centers and schools, medical or health care providers providing continuity of care, and other enrolled users of the registry.

[ARC 8377B, IAB 12/16/09, effective 11/18/09; ARC 8658B, IAB 4/7/10, effective 5/12/10; ARC 0481C, IAB 12/12/12, effective 1/16/13; ARC 1477C, IAB 6/11/14, effective 7/16/14]

**641—7.12(22) Release of immunization and health screening information.**

**7.12(1)** *Between a physician, physician assistant, nurse, certified medical assistant, or screening provider and the elementary, secondary, or postsecondary school or licensed child care center that the student attends.* A physician, a physician assistant, a nurse, a certified medical assistant, or a screening

provider shall disclose a student's or patient's immunization or health screening information, including the name, date of birth, and demographic information, the month, day, year and vaccine(s) administered, health screening results and clinic source and location, to an elementary, secondary, or postsecondary school or a licensed child care center upon written or verbal request from the elementary, secondary, or postsecondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary, secondary, or postsecondary school or licensed child care center that the student attends.

**7.12(2)** *Among physicians, physician assistants, nurses, certified medical assistants, or screening providers.* Immunization or health screening information, including the student's or patient's last name, first name, date of birth, and demographic information, the month, day, year and vaccine(s) administered, health screening results and clinic source and location, shall be provided by a physician, physician assistant, nurse, certified medical assistant, or screening provider to another health care provider without written or verbal permission from the student, parent, guardian or patient.

**7.12(3)** *Among an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.* An elementary school, secondary school, postsecondary school, and licensed child care center shall disclose a student's immunization or health screening information, including the student's last name, first name, date of birth, and demographic information, the month, day, and year of vaccine(s) administered, health screening results and clinic source and location, to another elementary school, secondary school, postsecondary school, and licensed child care center that the student attends. Written or verbal permission from a student, or if the student is a minor, the student's parent or guardian, is not required to release this information to an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.

**7.12(4)** *Among the department and a physician, physician assistant, nurse, certified medical assistant, screening provider, elementary school, secondary school, postsecondary school, and licensed child care center.* A student's or patient's immunization or health screening information, including name, date of birth, grade, and demographic information; vaccine(s) administered and the month, day and year of administration; and health screening results, clinic source, and location, all in a format specified by the department, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, screening providers, elementary schools, secondary schools, postsecondary schools, and licensed child care centers. Written or verbal permission from a student, patient, parent, or guardian is not required to release this information.

**7.12(5)** *Among the department and physicians, physician assistants, nurses, and certified medical assistants conducting refugee health screenings.* Refugee health screenings shall be disclosed only as indicated in this rule. Immunization or health screening information, including the patient's last name, first name, date of birth, and demographic information; the vaccine(s) administered and the month, day, and year of administration; health screening results; and clinic source and location, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, or screening providers to another health care provider or the department. Written or verbal permission from the parent, guardian or patient is not required to release this information.

[ARC 0481C, IAB 12/12/12, effective 1/16/13; ARC 1477C, IAB 6/11/14, effective 7/16/14; ARC 2390C, IAB 2/3/16, effective 3/9/16]

These rules are intended to implement Iowa Code sections 139A.8 and 22.7(2).

[Filed 11/10/77, Notice 10/5/77—published 11/30/77, effective 1/4/78]

[Filed emergency 12/23/77—published 1/11/78, effective 12/23/77]

[Filed emergency 9/18/78 after Notice 5/31/78—published 10/4/78, effective 9/18/78]

[Filed emergency 8/7/80 after Notice 6/11/80—published 9/3/80, effective 8/8/80]

[Filed emergency 1/15/81—published 2/4/81, effective 1/15/81]

[Filed 9/23/83, Notice 7/6/83—published 10/12/83, effective 11/16/83]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 1/11/89, Notice 10/19/88—published 2/8/89, effective 3/17/89]

[Filed 5/10/91, Notice 4/3/91—published 5/29/91, effective 7/3/91]

[Filed 5/16/94, Notice 3/2/94—published 6/8/94, effective 7/13/94]

[Filed 5/13/96, Notice 3/27/96—published 6/5/96, effective 7/10/96]

[Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]

[Filed emergency 7/9/03—published 8/6/03, effective 7/9/03]

[Filed 9/12/03, Notice 8/6/03—published 10/1/03, effective 11/5/03]<sup>◇</sup>

[Filed 7/15/05, Notice 5/25/05—published 8/3/05, effective 9/7/05]

[Filed emergency 1/11/06—published 2/1/06, effective 1/11/06]

[Filed 11/12/08, Notice 7/16/08—published 12/3/08, effective 1/7/09]

[Filed Emergency ARC 8377B, IAB 12/16/09, effective 11/18/09]

[Filed ARC 8658B (Notice ARC 8399B, IAB 12/16/09; Amended Notice ARC 8491B, IAB 1/27/10),  
IAB 4/7/10, effective 5/12/10]

[Filed ARC 0481C (Notice ARC 0370C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[Filed Emergency ARC 0586C, IAB 2/6/13, effective 1/16/13]

[Filed ARC 1477C (Notice ARC 1229C, IAB 12/11/13), IAB 6/11/14, effective 7/16/14]

[Filed ARC 2390C (Notice ARC 2306C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]

<sup>◇</sup> Two or more ARCs



CHAPTER 132  
EMERGENCY MEDICAL SERVICES—SERVICE PROGRAM AUTHORIZATION

[Joint Rules pursuant to 147A.4]

[Prior to 7/29/87, Health Department[470] Ch 132]

**641—132.1(147A) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Advanced emergency medical technician*” or “*AEMT*” means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Advanced Emergency Medical Technician Instructional Guidelines (January 2009), has passed the National Registry of Emergency Medical Technicians (NREMT) practical and cognitive examinations for the AEMT, and is currently certified by the department as an AEMT.

“*Ambulance*” means any privately or publicly owned ground vehicle specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated.

“*Ambulance service*” means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical services.

“*Automated defibrillator*” means any external semiautomatic device that determines whether defibrillation is required.

“*Automated external defibrillator*” or “*AED*” means an external semiautomated device that determines whether defibrillation is required.

“*CEH*” means “continuing education hour” which is based upon a minimum of 50 minutes of training per hour.

“*Continuous quality improvement (CQI)*” means a program that is an ongoing process to monitor standards at all EMS operational levels including the structure, process, and outcomes of the patient care event.

“*CPR*” means training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.

“*Critical care paramedic*” or “*CCP*” means a currently certified paramedic specialist or paramedic who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

“*Critical care transport*” or “*CCT*” means specialty care patient transportation, when medically necessary for a critically ill or injured patient needing critical care paramedic skills, provided by an authorized ambulance service that is approved by the department to provide critical care transportation and staffed by one or more critical care paramedics or other health care professional in an appropriate specialty area.

“*Current course completion*” means written recognition given for training and successful course completion of CPR with an expiration date or a recommended renewal date that exceeds the current date.

“*Deficiency*” means noncompliance with Iowa Code chapter 147A or these rules.

“*Department*” means the Iowa department of public health.

“*Director*” means the director of the Iowa department of public health.

“*Direct supervision*” means services provided by an EMS provider in a hospital setting or other health care entity in which health care is ordinarily performed when in the personal presence of a physician or under the direction of a physician who is immediately available or under the direction of a physician assistant or registered nurse who is immediately available and is acting consistent with adopted policies and protocols of a hospital or other health care entity.

“*Emergency medical care*” means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by protocol.
5. Any medical procedure authorized by 641—subrule 131.3(3).

*“Emergency medical care provider”* means an individual who has been trained to provide emergency and nonemergency medical care at the EMR, EMT, AEMT, paramedic or other certification levels recognized by the department before 2011 and who has been issued a certificate by the department.

*“Emergency medical responder”* or *“EMR”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Emergency Medical Responder Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the EMR, and is currently certified by the department as an EMR.

*“Emergency medical services”* or *“EMS”* means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

*“Emergency medical technician”* or *“EMT”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Emergency Medical Technician Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the EMT, and is currently certified by the department as an EMT.

*“Emergency medical technician-basic (EMT-B)”* means an individual who has successfully completed the current United States Department of Transportation’s Emergency Medical Technician-Basic curriculum and department enhancements, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-B.

*“Emergency medical technician-intermediate (EMT-I)”* means an individual who has successfully completed an EMT-intermediate curriculum approved by the department, passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-I.

*“Emergency medical technician-paramedic”* or *“EMT-P”* means an individual who has successfully completed the United States Department of Transportation’s EMT-Intermediate (1999) or the 1985 or earlier DOT EMT-P curriculum, has passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-P.

*“Emergency medical transportation”* means the transportation, by ambulance, of sick, injured or otherwise incapacitated persons who require emergency medical care.

*“EMS advisory council”* means a council appointed by the director to advise the director and develop policy recommendations concerning regulation, administration, and coordination of emergency medical services in the state.

*“EMS contingency plan”* means an agreement or dispatching policy between two or more ambulance service programs that addresses how and under what circumstances patient transportation will be provided in a given service area when coverage is not possible due to unforeseen circumstances.

*“EMS system”* is any specific arrangement of emergency medical personnel, equipment, and supplies designed to function in a coordinated fashion.

*“Endorsement”* means an approval granted by the department authorizing an individual to serve as an EMS-I, EMS-E or CCP.

*“First responder (FR)”* means an individual who has successfully completed the current United States Department of Transportation’s First Responder curriculum and department enhancements, passed the department’s approved written and practical examinations, and is currently certified by the department as an FR.

*“First response vehicle”* means any privately or publicly owned vehicle which is used solely for the transportation of emergency medical care personnel and equipment to and from the scene of a medical or nonmedical emergency.

*“Hospital”* means any hospital licensed under the provisions of Iowa Code chapter 135B.

*“Inclusion criteria”* means criteria determined by the department and adopted by reference to determine which patients are to be included in the Iowa EMS service program registry or the trauma registry.

*“Intermediate”* means an emergency medical technician-intermediate.

*“Iowa EMS Patient Registry Data Dictionary”* means reportable data elements for all ambulance service responses and definitions determined by the department and adopted by reference.

*“Medical direction”* means direction, advice, or orders provided by a medical director, supervising physician, or physician designee (in accordance with written parameters and protocols) to emergency medical care personnel.

*“Medical director”* means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

*“Mutual aid”* means an agreement, preferably in writing, between two or more services that addresses how and under what circumstances each service will respond to a request for assistance in situations that exhaust available resources.

*“Nonemergency transportation”* means transportation that may be provided for those persons determined to need transportation only.

*“Nontransport service”* means any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency.

*“Off-line medical direction”* means the monitoring of EMS providers through retrospective field assessments and treatment documentation review, critiques of selected cases with the EMS personnel, and statistical review of the system.

*“On-line medical direction”* means immediate medical direction provided directly to service program EMS providers, in accordance with written parameters and protocols, by the medical director, supervising physician or physician designee either on-scene or by any telecommunications system.

*“Paramedic”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Paramedic Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the paramedic, and is currently certified by the department as a paramedic.

*“Paramedic specialist (PS)”* means an individual who has successfully completed the current United States Department of Transportation’s EMT-Paramedic curriculum or equivalent, passed the department’s approved written and practical examinations, and is currently certified by the department as a paramedic specialist.

*“Patient”* means any individual who is sick, injured, or otherwise incapacitated.

*“Patient care report (PCR)”* means a computerized or written report that documents the assessment and management of the patient by the emergency care provider in the out-of-hospital setting.

*“Physician”* means any individual licensed under Iowa Code chapter 148, 150, or 150A.

*“Physician assistant (PA)”* means an individual licensed pursuant to Iowa Code chapter 148C.

*“Physician designee”* means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the care provided by emergency medical care providers.

*“Preceptor”* means an individual who has been assigned by the training program, clinical facility or service program to supervise students while the students are completing their clinical or field experience. A preceptor must be an emergency medical care provider certified at the level being supervised or higher, or must be licensed as a registered nurse, physician’s assistant or physician.

*“Protocols”* means written directions and orders, consistent with the department’s standard of care, that are to be followed by an emergency medical care provider in emergency and nonemergency situations. Protocols must be approved by the service program’s medical director and address the care of both adult and pediatric patients.

*“Registered nurse (RN)”* means an individual licensed pursuant to Iowa Code chapter 152.

*“Reportable patient data”* means data elements and definitions determined by the department and adopted by reference to be reported to the Iowa EMS service program registry or the trauma registry or a trauma care facility on patients meeting the inclusion criteria.

“*Rescue vehicle*” means any privately or publicly owned vehicle which is specifically designed, modified, constructed, equipped, staffed and used regularly for rescue or extrication purposes at the scene of a medical or nonmedical emergency.

“*Service director*” means an individual who is responsible for the operation and administration of a service program.

“*Service program*” or “*service*” means any medical care ambulance service or nontransport service that has received authorization by the department.

“*Service program area*” means the geographic area of responsibility served by any given ambulance or nontransport service program.

“*Student*” means any individual enrolled in a training program and participating in the didactic, clinical, or field experience portions.

“*Supervising physician*” means any physician licensed under Iowa Code chapter 148, 150, or 150A. The supervising physician is responsible for medical direction of emergency medical care personnel when such personnel are providing emergency medical care.

“*Tiered response*” means a rendezvous of service programs to allow the transfer of patient care.

“*Training program*” means an NCA-approved Iowa college, the Iowa law enforcement academy or an Iowa hospital approved by the department to conduct emergency medical care training.

“*Transport agreement*” means a written agreement between two or more service programs that specifies the duties and responsibilities of the agreeing parties to ensure appropriate transportation of patients in a given service area.

[ARC 8661B, IAB 4/7/10, effective 5/12/10; ARC 9357B, IAB 2/9/11, effective 3/16/11; ARC 0063C, IAB 4/4/12, effective 5/9/12]

#### **641—132.2(147A) Authority of emergency medical care provider.**

**132.2(1)** Rescinded IAB 2/7/01, effective 3/14/01.

**132.2(2)** An emergency medical care provider who holds an active certification issued by the department may:

*a.* Render via on-line medical direction emergency and nonemergency medical care in those areas for which the emergency medical care provider is certified, as part of an authorized service program:

- (1) At the scene of an emergency;
- (2) During transportation to a hospital;
- (3) While in the hospital emergency department;
- (4) Until patient care is directly assumed by a physician or by authorized hospital personnel; and
- (5) During transfer from one medical care facility to another or to a private home.

*b.* Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision of a physician when:

- (1) Enrolled as a student in and approved by a training program;
- (2) Fulfilling continuing education requirements;
- (3) Employed by or assigned to a hospital or other entity in which health care is ordinarily

provided only when under the direct supervision of a physician as a member of an authorized service program, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider’s certification and under direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care personnel may perform, without direct supervision, emergency medical care procedures for which certified, if the life of the patient is in immediate danger and such care is required to preserve the patient’s life;

(4) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized service program, or in an individual capacity, to perform nonlifesaving procedures for which certified and designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or

registered nurse, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

**132.2(3)** When emergency medical care personnel are functioning in a capacity identified in subrule 132.2(2), paragraph “a,” they may perform emergency and nonemergency medical care without contacting a supervising physician or physician designee if written protocols have been approved by the service program medical director which clearly identify when the protocols may be used in lieu of voice contact.

**132.2(4)** Scope of practice.

*a.* Emergency medical care providers shall provide only those services and procedures as are authorized within the scope of practice for which they are certified.

*b.* Scope of Practice for Iowa EMS Providers (April 2015) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the Scope of Practice adopted by reference and these administrative rules, the administrative rules shall prevail.

*c.* The department may grant a variance for changes to the Scope of Practice that have not yet been adopted by these rules. A variance to these rules may be granted by the department pursuant to 132.14(1).

*d.* Scope of Practice for Iowa EMS Providers is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site ([www.idph.state.ia.us/ems](http://www.idph.state.ia.us/ems)).

**132.2(5)** The department may approve other emergency medical care skills on a limited pilot project basis. Requests for a pilot project application shall be made to the department.

**132.2(6)** An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days.

[ARC 8230B, IAB 10/7/09, effective 11/11/09; ARC 0063C, IAB 4/4/12, effective 5/9/12; ARC 0480C, IAB 12/12/12, effective 1/16/13; ARC 1404C, IAB 4/2/14, effective 5/7/14; ARC 2278C, IAB 12/9/15, effective 1/13/16]

**641—132.3(147A) Emergency medical care providers—requirements for enrollment in training programs.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.4(147A) Emergency medical care providers—certification, renewal standards and procedures, and fees.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.5(147A) Training programs—standards, application, inspection and approval.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.6(147A) Continuing education providers—approval, record keeping and inspection.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.7(147A) Service program—authorization and renewal procedures, inspections and transfer or assignment of certificates of authorization.**

**132.7(1)** *General requirements for authorization and renewal of authorization.*

*a.* An ambulance or nontransport service in this state that desires to provide emergency medical care, in the out-of-hospital setting, shall apply to the department for authorization to establish a program utilizing certified emergency medical care providers for delivery of care at the scene of an emergency or nonemergency, during transportation to a hospital, during transfer from one medical care facility to another or to a private home, or while in the hospital emergency department and until care is directly assumed by a physician or by authorized hospital personnel. Application for authorization shall be made on forms provided by the department. Applicants shall complete and submit the forms to the department at least 30 days prior to the anticipated date of authorization.

*b.* To renew service program authorization, the service program shall continue to meet the requirements of Iowa Code chapter 147A and these rules. The renewal application shall be completed and submitted to the department at least 30 days before the current authorization expires.

c. Applications for authorization and renewal of authorization may be obtained upon request to: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site ([www.idph.state.ia.us/ems](http://www.idph.state.ia.us/ems)).

d. The department shall approve an application when the department is satisfied that the program proposed by the application will be operated in compliance with Iowa Code chapter 147A and these administrative rules.

e. Service program authorization is valid for a period of three years from its effective date unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked.

f. Service programs shall be fully operational upon the effective date and at the level specified on the certificate of authorization and shall meet all applicable requirements of Iowa Code chapter 147A and these rules. Deficiencies that are identified shall be corrected within a time frame determined by the department.

g. The certificate of authorization shall be issued to the service program based in the city named in the application. Any ambulance service or nontransport service that operates from more than one city shall apply for and, if approved, shall receive an inclusive authorization for each city of operation that is listed in the application.

h. Any service program owner in possession of a certificate of authorization as a result of transfer or assignment shall continue to meet all applicable requirements of Iowa Code chapter 147A and these rules. In addition, the new owner shall apply to the department for a new certificate of authorization within 30 days following the effective date of the transfer or assignment.

i. Service programs that acquire and maintain current status with a nationally recognized EMS service program accreditation entity that meets or exceeds Iowa requirements may be exempted from the service application/inspection process. A copy of the state service application and accreditation inspection must be filed with the department for approval.

**132.7(2) *Out-of-state service programs.***

a. Service programs located in other states which wish to provide emergency medical care in Iowa must meet all requirements of Iowa Code chapter 147A and these rules and must be authorized by the department except when:

- (1) Transporting patients from locations within Iowa to destinations outside of Iowa;
- (2) Transporting patients from locations outside of Iowa to destinations within Iowa;
- (3) Transporting patients to or from locations outside of Iowa that requires travel through Iowa;
- (4) Responding to a request for mutual aid in this state; or
- (5) Making an occasional EMS response to locations within Iowa and then transporting the patients to destinations within Iowa.

b. An out-of-state service program that meets any of the exception criteria established in 132.7(2) shall be authorized to provide emergency medical care by the state in which the program resides and shall provide the department with verification of current state authorization upon request.

**132.7(3) *Air ambulances.*** Rescinded IAB 4/7/10, effective 5/12/10.

**132.7(4) *Service program inspections.***

a. The department shall inspect each service program at least once every three years. The department without prior notification may make additional inspections at times, places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

b. The department may request additional information from or may inspect the records of any service program which is currently authorized or which is seeking authorization to ensure continued compliance or to verify the validity of any information presented on the application for service program authorization.

c. The department may inspect the patient care records of a service program to verify compliance with Iowa Code chapter 147A and these rules.

d. No person shall interfere with the inspection activities of the department or its agents pursuant to Iowa Code section 135.36.

e. Interference with or failure to allow an inspection by the department or its agents may be cause for disciplinary action in reference to service program authorization.

**132.7(5) Temporary service program authorization.**

a. A temporary service program authorization may be issued to services that wish to operate during special events that may need emergency medical care coverage. Temporary authorization is valid for a period of 30 days unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked. Temporary authorization shall apply to those requirements and standards for which the department is responsible. Applicants shall complete and submit the necessary forms to the department at least 30 days prior to the anticipated date of need.

b. The service shall meet applicable requirement of these rules, but may apply for a variance using the criteria outlined in rule 641—132.14(147A).

c. The service shall submit a justification which demonstrates the need for the temporary service program authorization.

d. The service shall submit a report, to the department, within 30 days after the expiration of the temporary authorization which includes as a minimum:

- (1) Number of patients treated;
- (2) Types of treatment rendered;
- (3) Any operational or medical problems.

**132.7(6) Conditional service program authorization.** Rescinded IAB 2/6/02, effective 3/13/02.  
[ARC 8661B, IAB 4/7/10, effective 5/12/10; ARC 9357B, IAB 2/9/11, effective 3/16/11]

**641—132.8(147A) Service program levels of care and staffing standards.**

**132.8(1)** A service program seeking ambulance authorization shall:

a. Apply for authorization at one of the following levels:

- (1) EMT-B/EMT.
- (2) EMT-I.
- (3) AEMT.
- (4) EMT-P.
- (5) PS/Paramedic.

b. Maintain an adequate number of ambulances and personnel to provide 24-hour-per-day, 7-day-per-week coverage. Ambulances shall comply with paragraph 132.8(1)“d.” The number of ambulances and personnel to be maintained shall be determined by the department, and shall be based upon, but not limited to, the following:

- (1) Number of calls;
- (2) Service area and population; and
- (3) Availability of other services in the area.

c. Provide as a minimum, on each ambulance call, the following staff:

- (1) One currently certified EMT-B or EMT.
- (2) One currently licensed driver. The service shall document each driver’s training in CPR (AED training not required).

d. Submit an EMS contingency plan that will be put into operation when coverage pursuant to the 24/7 rule in paragraph 132.8(1)“b” is not possible due to unforeseen circumstances.

e. Report frequency of use of the contingency plan to the department upon request.

f. Seek approval from the department to provide nontransport coverage in addition to or in lieu of ambulance authorization.

g. Advertise or otherwise imply or hold itself out to the public as an authorized ambulance service only to the level of care maintained 24 hours per day, seven days a week.

h. Apply to the department to receive approval to provide critical care transportation based upon appropriately trained staff and approved equipment.

i. Unless otherwise established by protocol approved by the medical director, the emergency medical care provider with the highest level of certification (on the transporting service) shall attend the patient.

**132.8(2)** A service program seeking nontransport authorization shall:

a. Apply for authorization at one of the following levels:

- (1) First responder/EMR.
  - (2) EMT-B/EMT.
  - (3) EMT-I.
  - (4) AEMT.
  - (5) EMT-P.
  - (6) PS/Paramedic.
- b.* For staffing purposes provide, as a minimum, a transport agreement.
- c.* Advertise or otherwise hold itself out to the public as an authorized nontransport service program only to the level of care maintained 24 hours per day, seven days a week.
- d.* Not be prohibited from transporting patients in an emergency situation when lack of transporting resources would cause an unnecessary delay in patient care.

**132.8(3)** Service program operational requirements. Ambulance and nontransport service programs shall:

- a.* Complete and maintain a patient care report concerning the care provided to each patient. Ambulance services shall provide, at a minimum, a PCR verbal report upon delivery of a patient to a receiving facility and shall provide a complete PCR within 24 hours to the receiving facility.
- b.* Utilize department protocols as the standard of care. The service program medical director may make changes to the department protocols provided the changes are within the EMS provider's scope of practice and within acceptable medical practice. A copy of the changes shall be filed with the department.
- c.* Ensure that personnel duties are consistent with the level of certification and the service program's level of authorization.
- d.* Maintain current personnel rosters and personnel files. The files shall include the names and addresses of all personnel and documentation that verifies EMS provider credentials including, but not limited to:
- (1) Current provider level certification.
  - (2) Current course completions/certifications/endorsements as may be required by the medical director.
  - (3) PA and RN exception forms for appropriate personnel and verification that PA and RN personnel have completed the appropriate EMS level continuing education.
- e.* If requested by the department, notify the department in writing of any changes in personnel rosters.
- f.* Have a medical director and 24-hour-per-day, 7-day-per-week on-line medical direction available.
- g.* Ensure that the appropriate service program personnel respond as required in this rule and that they respond in a reasonable amount of time.
- h.* Notify the department in writing within seven days of any change in service director or ownership or control or of any reduction or discontinuance of operations.
- i.* Select a new or temporary medical director if for any reason the current medical director cannot or no longer wishes to serve in that capacity. Selection shall be made before the current medical director relinquishes the duties and responsibilities of that position.
- j.* Within seven days of any change of medical director, notify the department in writing of the selection of the new or temporary medical director who must have indicated in writing a willingness to serve in that capacity.
- k.* Not prevent a registered nurse or physician assistant from supplementing the staffing of an authorized service program provided equivalent training is documented pursuant to Iowa Code sections 147A.12 and 147A.13.
- l.* Not be authorized to utilize a manual defibrillator (except paramedic, paramedic specialist).
- m.* Implement a continuous quality improvement program that provides a policy to include as a minimum:
- (1) Medical audits.
  - (2) Skills competency.
  - (3) Follow-up (loop closure/resolution).

*n.* Require physician assistants and registered nurses providing care pursuant to Iowa Code sections 147A.12 and 147A.13 to meet CEH requirements approved by the medical director.

*o.* Document an equipment maintenance program to ensure proper working condition and appropriate quantities.

*p.* Ensure a response to requests for assistance when dispatched by a public safety answering point within the primary service area identified in the service program's authorization application.

*q.* Submit reportable patient data identified in subrule 132.8(7) via electronic transfer. Data shall be submitted in a format approved by the department.

*r.* Submit reportable patient data identified in subrule 132.8(7) to the department for each calendar quarter. Reportable patient data shall be submitted no later than 90 days after the end of the quarter.

*s.* Ensure that any member of the service driving a service's first response vehicle, ambulance, or rescue vehicle or a personal vehicle when responding as a member of the service has documented training in emergency driving techniques and in the use of the service's communications equipment. Training in emergency driving techniques shall include:

(1) A review of Iowa laws regarding emergency vehicle operations.

(2) A review of the service program's driving policy for first response vehicles, ambulances, rescue vehicles or personal vehicles when used by a service member responding as a member of the service. The policy shall include, at a minimum:

1. Frequency and content of driver's training requirements.

2. Criteria for response with lights or sirens or both.

3. Speed limits when responding with lights or sirens or both.

4. Procedure for approaching intersections with lights or sirens or both.

5. Notification process in the event of a motor vehicle collision involving a first response vehicle, ambulance, rescue vehicle or personal vehicle when used by a service member responding as a member of the service.

(3) Behind-the-wheel driving of the service's first response vehicles, ambulances and rescue vehicles.

**132.8(4)** Equipment and vehicle standards. The following standards shall apply:

*a.* Ambulances placed into service after July 1, 2002, shall meet, as a minimum, the National Truck and Equipment Association's Ambulance Manufacture Division (AMD) performance specifications.

*b.* All EMS service programs shall carry equipment and supplies in quantities as determined by the medical director and appropriate to the service program's level of care and available certified EMS personnel and as established in the service program's approved protocols.

*c.* Pharmaceutical drugs and over-the-counter drugs may be carried and administered upon completion of training and pursuant to the service program's established protocols approved by the medical director.

*d.* All drugs shall be maintained in accordance with the rules of the state board of pharmacy examiners.

*e.* Accountability for drug exchange, distribution, storage, ownership, and security shall be subject to applicable state and federal requirements. The method of accountability shall be described in the written pharmacy agreement. A copy of the written pharmacy agreement shall be submitted to the department.

*f.* Each ambulance service program shall maintain a telecommunications system between the emergency medical care provider and the source of the service program's medical direction and other appropriate entities. Nontransport service programs shall maintain a telecommunications system between the emergency medical care provider and the responding ambulance service and other appropriate entities.

*g.* All telecommunications shall be conducted in an appropriate manner and on a frequency approved by the Federal Communications Commission and the department.

**132.8(5)** Preventative maintenance. Each ambulance service program shall document a preventative maintenance program to make certain that:

*a.* Vehicles are fully equipped and maintained in a safe operating condition. In addition:

(1) All ground ambulances shall be housed in a garage or other facility that prevents engine, equipment and supply freeze-up and windshield icing. An unobstructed exit to the street shall also be maintained;

(2) The garage or other facility shall be adequately heated or each response vehicle shall have permanently installed auxiliary heating units to sufficiently heat the engine and patient compartment; and

(3) The garage or other facility shall be maintained in a clean, safe condition free of debris or other hazards.

*b.* The exterior and interior of the vehicles are kept clean. The interior and equipment shall be cleaned after each use as necessary. When a patient with a communicable disease has been transported or treated, the interior and any equipment or nondisposable supplies coming in contact with the patient shall be thoroughly disinfected.

*c.* All equipment stored in a patient compartment is secured so that, in the event of a sudden stop or movement of the vehicle, the patient and service program personnel are not injured by moving equipment.

*d.* All airway, electrical and mechanical equipment is kept clean and in proper operating condition.

*e.* Compartments provided within the vehicles and the medical and other supplies stored therein are kept in a clean and sanitary condition.

*f.* All linens, airway and oxygen equipment or any other supplies or equipment coming in direct patient contact is of a single-use disposable type or cleaned, laundered or disinfected prior to reuse.

*g.* Freshly laundered blankets and linen or disposable linens are used on cots and pillows and are changed after each use.

*h.* Proper storage is provided for clean linen.

*i.* Soiled supplies shall be appropriately disposed of according to current biohazard practices.

**132.8(6) Service program—incident and accident reports.**

*a.* Incidents of fire or other destructive or damaging occurrences or theft of a service program ambulance, equipment, or drugs shall be reported to the department within 48 hours following the occurrence of the incident.

*b.* A copy of the motor vehicle accident report required under Iowa Code subsection 321.266(2), relating to the reporting of an accident resulting in personal injury, death or property damage, shall be submitted to the department within seven days following an accident involving a service program vehicle.

*c.* A service program must report the termination of an emergency medical care provider due to negligence, professional incompetency, unethical conduct or substance use to the department within ten days following the termination.

**132.8(7) Adoption by reference.** The Iowa EMS Patient Registry Data Dictionary identified in 641—paragraph 136.2(1)“*c*” is adopted and incorporated by reference for inclusion criteria and reportable patient data. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

*a.* The Iowa EMS Patient Registry Data Dictionary identified in 641—paragraph 136.2(1)“*c*” is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the EMS bureau Web site ([www.idph.state.ia.us/ems](http://www.idph.state.ia.us/ems)).

*b.* The department shall prepare compilations for release or dissemination on all reportable patient data entered into the EMS service program registry during the reporting period. The compilations shall include, but not be limited to, trends and patient care outcomes for local, regional, and statewide evaluations. The compilations shall be made available to all service programs submitting reportable patient data to the registry.

*c.* Access and release of reportable patient data and information.

(1) The data collected by and furnished to the department pursuant to this subrule are confidential records of the condition, diagnosis, care, or treatment of patients or former patients, including outpatients, pursuant to Iowa Code section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under Iowa Code section 22.7, subsection 2. However, information

which individually identifies patients shall not be disclosed, and state and federal law regarding patient confidentiality shall apply.

(2) The department may approve requests for reportable patient data for special studies and analysis provided the request has been reviewed and approved by the deputy director of the department with respect to the scientific merit and confidentiality safeguards, and the department has given administrative approval for the proposal. The confidentiality of patients and the EMS service program shall be protected.

(3) The department may require entities requesting the data to pay any or all of the reasonable costs associated with furnishing the reportable patient data.

*d.* To the extent possible, activities under this subrule shall be coordinated with other health data collection methods.

*e.* Quality assurance.

(1) For the purpose of ensuring the completeness and quality of reportable patient data, the department or authorized representative may examine all or part of the patient care report as necessary to verify or clarify all reportable patient data submitted by a service program.

(2) Review of a patient care report by the department shall be scheduled in advance with the service program and completed in a timely manner.

*f.* The director, pursuant to Iowa Code section 147A.4, may grant a variance from the requirements of these rules for any service program, provided that the variance is related to undue hardships in complying with this chapter.

**132.8(8)** The patient care report is a confidential document and shall be exempt from disclosure pursuant to Iowa Code subsection 22.7(2) and shall not be accessible to the general public. Information contained in these reports, however, may be utilized by any of the indicated distribution recipients and may appear in any document or public health record in a manner which prevents the identification of any patient or person named in these reports.

**132.8(9)** Implementation. The director may grant exceptions and variances from the requirements of this chapter for any ambulance or nontransport service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this chapter. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to Iowa Code chapter 147A.

[ARC 8661B, IAB 4/7/10, effective 5/12/10; ARC 9357B, IAB 2/9/11, effective 3/16/11; ARC 9444B, IAB 4/6/11, effective 5/11/11; ARC 0063C, IAB 4/4/12, effective 5/9/12; ARC 2391C, IAB 2/3/16, effective 3/9/16]

#### **641—132.9(147A) Service program—off-line medical direction.**

**132.9(1)** The medical director shall be responsible for providing appropriate medical direction and overall supervision of the medical aspects of the service program and shall ensure that those duties and responsibilities are not relinquished before a new or temporary replacement is functioning in that capacity.

**132.9(2)** The medical director's duties include, but need not be limited to:

*a.* Developing, approving and updating protocols to be used by service program personnel that meet or exceed the minimum standard protocols developed by the department.

*b.* Developing and maintaining liaisons between the service, other physicians, physician designees, hospitals, and the medical community served by the service program.

*c.* Monitoring and evaluating the activities of the service program and individual personnel performance, including establishment of measurable outcomes that reflect the goals and standards of the EMS system.

*d.* Assessing the continuing education needs of the service and individual service program personnel and assisting them in the planning of appropriate continuing education programs.

*e.* Being available for individual evaluation and consultation to service program personnel.

*f.* Performing or appointing a designee to complete the medical audits required in subrule 132.9(4).

*g.* Developing and approving an applicable continuous quality improvement policy demonstrating type and frequency of review, including an action plan and follow-up.

*h.* Informing the medical community of the emergency medical care being provided according to approved protocols in the service program area.

*i.* Helping to resolve service operational problems.

*j.* Approving or removing an individual from service program participation.

**132.9(3)** Supervising physicians, physician designees, or other appointees as defined in the continuous quality improvement policy referenced in 132.9(2) “g” may assist the medical director by:

*a.* Providing medical direction.

*b.* Reviewing the emergency medical care provided.

*c.* Reviewing and updating protocols.

*d.* Providing and assessing continuing education needs for service program personnel.

*e.* Helping to resolve operational problems.

**132.9(4)** The medical director or other qualified designees shall randomly audit (at least quarterly) documentation of calls where emergency medical care was provided. The medical director shall randomly review audits performed by the qualified appointee. The audit shall be in writing and shall include, but need not be limited to:

*a.* Reviewing the patient care provided by service program personnel and remedying any deficiencies or potential deficiencies that may be identified regarding medical knowledge or skill performance.

*b.* Response time and time spent at the scene.

*c.* Overall EMS system response to ensure that the patient’s needs were matched to available resources including, but not limited to, mutual aid and tiered response.

*d.* Completeness of documentation.

**132.9(5)** Rescinded IAB 2/6/02, effective 3/13/02.

**132.9(6)** On-line medical direction when provided through a hospital.

*a.* The medical director shall designate in writing at least one hospital which has established a written on-line medical direction agreement with the department. It shall be the medical director’s responsibility to notify the department in writing of changes regarding this designation.

*b.* Hospitals signing an on-line medical direction agreement shall:

(1) Ensure that the supervising physicians or physician designees will be available to provide on-line medical direction via telecommunications on a 24-hour-per-day basis.

(2) Identify the service programs for which on-line medical direction will be provided.

(3) Establish written protocols for use by supervising physicians and physician designees who provide on-line medical direction.

(4) Administer a quality assurance program to review orders given. The program shall include a mechanism for the hospital and service program medical directors to discuss and resolve any identified problems.

*c.* A hospital which has a written medical direction agreement with the department may provide medical direction for any or all service program authorization levels and may also agree to provide backup on-line medical direction for any other service program when that service program is unable to contact its primary source of on-line medical direction.

*d.* Only supervising physicians or physician designees shall provide on-line medical direction. A physician assistant, registered nurse or emergency medical care provider (of equal or higher level) may relay orders to emergency medical care personnel, without modification, from a supervising physician. A physician designee may not deviate from approved protocols.

*e.* The hospital shall provide, upon request to the department, a list of supervising physicians and physician designees providing on-line medical direction.

*f.* Rescinded IAB 2/6/02, effective 3/13/02.

*g.* The department may verify a hospital’s communications system to ensure compliance with the on-line medical direction agreement.

*h.* A supervising physician or physician designee who gives orders (directly or via communications equipment from some other point) to an emergency medical care provider is not subject

to criminal liability by reason of having issued the orders and is not liable for civil damages for acts or omissions relating to the issuance of the orders unless the acts or omissions constitute recklessness.

*i.* Nothing in these rules requires or obligates a hospital, supervising physician or physician designee to approve requests for orders received from emergency medical care personnel.

NOTE: Hospitals in other states may participate provided the applicable requirements of this subrule are met.

[ARC 0063C, IAB 4/4/12, effective 5/9/12]

**641—132.10(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal.**

**132.10(1)** All complaints regarding the operation of authorized emergency medical care service programs, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.10(2)** Complaints and the investigative process will be treated as confidential in accordance with Iowa Code section 22.7.

**132.10(3)** Service program authorization may be denied, issued a civil penalty not to exceed \$1000, issued a citation and warning, placed on probation, suspended, revoked, or otherwise disciplined by the department in accordance with Iowa Code subsection 147A.5(3) for any of the following reasons:

- a.* Knowingly allowing the falsifying of a patient care report (PCR).
- b.* Failure to submit required reports and documents.
- c.* Delegating professional responsibility to a person when the service program knows that the person is not qualified by training, education, experience or certification to perform the required duties.
- d.* Practicing, condoning, or facilitating discrimination against a patient, student or employee based on race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability diagnosis, or social or economic status.
- e.* Knowingly allowing sexual harassment of a patient, student or employee. Sexual harassment includes sexual advances, sexual solicitations, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- f.* Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.
- g.* Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means or misrepresentation or by submitting false information.
- h.* Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.
- i.* Failure to correct a deficiency within the time frame required by the department.

**132.10(4)** The department shall notify the applicant of the granting or denial of authorization or renewal, or shall notify the alleged violator of action to issue a citation and warning, place on probation or suspend or revoke authorization or renewal pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a denial, citation and warning, probation, suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

**132.10(5)** Any requests for appeal concerning the denial, citation and warning, probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, citation and warning, probation, suspension or revocation. If no request

for appeal is received within the 20-day time period, the department's notice of denial, probation, suspension or revocation shall become the department's final agency action.

**132.10(6)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**132.10(7)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

**132.10(8)** When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 132.10(9).

**132.10(9)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**132.10(10)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections, and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

**132.10(11)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

**132.10(12)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**132.10(13)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Bureau of Emergency Medical Services, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.10(14)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**132.10(15)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

**132.10(16)** This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

**132.10(17)** Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a certificate in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

*b.* Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

- (1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;
- (2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- (3) Whether the program required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- (4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- (5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

*c.* Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the service program that is required to comply with the order by utilizing one or more of the following procedures:

1. Personal delivery.
2. Certified mail, return receipt requested, to the last address on file with the department.
3. Fax. Fax may be used as the sole method of delivery if the service program required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the service program that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the service program that is required to comply with the order is the party requesting the continuance.

[ARC 8661B, IAB 4/7/10, effective 5/12/10]

**641—132.11(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of emergency medical care personnel certificates or renewal.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.12(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of training program or continuing education provider approval or renewal.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.13(147A) Complaints, investigations and appeals.** Rescinded IAB 2/9/00, effective 3/15/00.

**641—132.14(147A) Temporary variances.**

**132.14(1)** If during a period of authorization there is some occurrence that temporarily causes a service program to be in noncompliance with these rules, the department may grant a temporary variance. Temporary variances to these rules (not to exceed six months in length per any approved request) may be

granted by the department to a currently authorized service program. Requests for temporary variances shall apply only to the service program requesting the variance and shall apply only to those requirements and standards for which the department is responsible.

**132.14(2)** To request a variance, the service program shall:

*a.* Notify the department verbally (as soon as possible) of the need to request a temporary variance. Submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary variance request. The address and telephone number are Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)725-0326.

*b.* Cite the rule from which the variance is requested.

*c.* State why compliance with the rule cannot be maintained.

*d.* Explain the alternative arrangements that have been or will be made regarding the variance request.

*e.* Estimate the period of time for which the variance will be needed.

*f.* Rescinded IAB 2/2/05, effective 3/9/05.

**132.14(3)** Upon notification of a request for variance, the department shall take into consideration, but shall not be limited to:

*a.* Examining the rule from which the temporary variance is requested to determine if the request is appropriate and reasonable.

*b.* Evaluating the alternative arrangements that have been or will be made regarding the variance request.

*c.* Examining the effect of the requested variance upon the level of care provided to the general populace served.

*d.* Requesting additional information if necessary.

**132.14(4)** Preliminary approval or denial shall be provided verbally within 24 hours. Final approval or denial shall be issued in writing within ten days after having received the written explanation for the temporary variance request and shall include the reason for approval or denial. If approval is granted, the effective date and the duration of the temporary variance shall be clearly stated.

**132.14(5)** Rescinded, effective July 10, 1987.

**132.14(6)** Any request for appeal concerning the denial of a request for temporary variance shall be in accordance with the procedures outlined in rule 641—132.10(147A).

**132.14(7)** Rescinded IAB 2/3/93, effective 3/10/93.

**641—132.15(147A) Transport options for fully authorized EMT-P, PS, and paramedic service programs.**

**132.15(1)** Upon responding to an emergency call, ambulance or nontransport EMT-P, PS, and paramedic level services may make a determination at the scene as to whether emergency medical transportation or nonemergency transportation is needed. The determination shall be made by an EMT-P, paramedic or paramedic specialist and shall be based upon the nonemergency transportation protocol approved by the service program's medical director. When applying this protocol, the following criteria, as a minimum, shall be used to determine the appropriate transport option:

*a.* Primary assessment,

*b.* Focused history and physical examination,

*c.* Chief complaint,

*d.* Name, address and age, and

*e.* Nature of the call for assistance.

Emergency medical transportation shall be provided whenever any of the above criteria indicate that treatment should be initiated.

**132.15(2)** If treatment is not indicated, the service program may make arrangements for nonemergency transportation. If arrangements are made, the service program shall remain at the scene

until nonemergency transportation arrives. During the wait for nonemergency transportation, however, the ambulance or nontransport service may respond to an emergency.

[ARC 0063C, IAB 4/4/12, effective 5/9/12]

**641—132.16(147A) Public access defibrillation.** Rescinded IAB 2/2/05, effective 3/9/05.

These rules are intended to implement Iowa Code chapter 147A.

- [Filed 5/11/79, Notice 4/4/79—published 5/30/79, effective 7/5/79]
- [Filed emergency 3/27/81—published 4/15/81, effective 3/27/81]
- [Filed without Notice 5/21/81—published 6/10/81, effective 7/15/81]
- [Filed emergency 7/15/81—published 8/5/81, effective 7/15/81]
- [Filed emergency 2/4/82—published 3/3/82, effective 3/1/82]
- [Filed 10/27/82, Notice 9/1/82—published 11/24/82, effective 12/29/82]
- [Filed emergency 12/16/82—published 1/5/83, effective 12/30/82]
- [Filed emergency 9/20/83—published 10/12/83, effective 9/21/83]
- [Filed 9/15/83, Notice 7/6/83—published 10/12/83, effective 11/16/83]
- [Filed emergency 12/26/84—published 1/16/85, effective 12/31/84]
- [Filed emergency after Notice 5/8/85, Notice 3/27/85—published 6/5/85, effective 5/17/85]
- [Filed emergency 9/11/85—published 10/9/85, effective 9/11/85]
- [Filed emergency 12/24/85—published 1/15/86, effective 12/31/85]
- [Filed 5/30/86, Notice 3/26/86—published 6/18/86, effective 7/23/86]
- [Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]<sup>1</sup>
- [Filed 8/28/86, Notice 4/9/86—published 9/24/86, effective 10/29/86]
- [Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]
- [Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]
- [Filed 7/10/87, Notice 2/11/87—published 7/29/87, effective 9/2/87]
- [Filed emergency 1/30/89—published 2/22/89, effective 1/31/89]
- [Filed emergency 5/10/89—published 5/31/89, effective 5/12/89]
- [Filed 9/14/89, Notice 6/28/89—published 10/4/89, effective 11/8/89]
- [Filed 6/22/90, Notice 4/18/90—published 7/11/90, effective 8/15/90]
- [Filed 3/13/92, Notice 12/11/91—published 4/1/92, effective 5/6/92]
- [Filed 1/15/93, Notice 9/30/92—published 2/3/93, effective 3/10/93]
- [Filed 1/14/94, Notice 10/13/93—published 2/2/94, effective 3/9/94]
- [Filed 9/20/95, Notice 8/2/95—published 10/11/95, effective 11/15/95]
- [Filed 7/10/96, Notice 6/5/96—published 7/31/96, effective 9/4/96]
- [Filed 9/16/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
- [Filed emergency 1/23/98—published 2/11/98, effective 1/23/98]
- [Filed 2/26/98, Notice 9/10/97—published 3/25/98, effective 4/29/98]
- [Filed 3/18/98, Notice 1/14/98—published 4/8/98, effective 5/13/98]
- [Filed 5/15/98, Notice 3/11/98—published 6/3/98, effective 7/8/98]
- [Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]
- [Filed 1/20/00, Notice 12/1/99—published 2/9/00, effective 3/15/00]
- [Filed emergency 9/14/00—published 10/4/00, effective 9/14/00]
- [Filed 1/18/01, Notice 11/29/00—published 2/7/01, effective 3/14/01]
- [Filed 1/10/02, Notice 11/28/01—published 2/6/02, effective 3/13/02]
- [Filed 1/13/05, Notice 11/24/04—published 2/2/05, effective 3/9/05]<sup>2</sup>
- [Filed emergency 7/13/05 after Notice 6/8/05—published 8/3/05, effective 7/13/05]
- [Filed 7/12/06, Notice 5/24/06—published 8/2/06, effective 9/6/06]
- [Filed 11/12/08, Notice 9/24/08—published 12/3/08, effective 1/7/09]
- [Filed ARC 8230B (Notice ARC 7969B, IAB 7/15/09), IAB 10/7/09, effective 11/11/09]
- [Filed ARC 8661B (Notice ARC 8498B, IAB 1/27/10), IAB 4/7/10, effective 5/12/10]
- [Filed ARC 9357B (Notice ARC 9240B, IAB 11/17/10), IAB 2/9/11, effective 3/16/11]
- [Filed ARC 9444B (Notice ARC 9343B, IAB 1/26/11), IAB 4/6/11, effective 5/11/11]

[Filed ARC 0063C (Notice ARC 0001C, IAB 2/8/12), IAB 4/4/12, effective 5/9/12]  
[Filed ARC 0480C (Notice ARC 0377C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]  
[Filed ARC 1404C (Notice ARC 1292C, IAB 1/22/14), IAB 4/2/14, effective 5/7/14]  
[Filed ARC 2278C (Notice ARC 2149C, IAB 9/16/15), IAB 12/9/15, effective 1/13/16]  
[Filed ARC 2391C (Notice ARC 2304C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]

<sup>1</sup> See IAB, Inspections and Appeals Department.

<sup>2</sup> Rescission of paragraph 132.14(2)“f” inadvertently omitted from 2/2/05 Supplement.

## **MEDICINE BOARD[653]**

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]  
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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CHAPTER 13  
STANDARDS OF PRACTICE AND PRINCIPLES OF MEDICAL ETHICS

[Prior to 5/4/88, see 470—135.251 to 470—135.402]

**653—13.1(148,272C) Standards of practice—packaging, labeling and records of prescription drugs dispensed by a physician.**

**13.1(1)** A physician shall dispense a prescription drug only in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471-1476 (2001), unless otherwise requested by the patient, and of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. ss. 301 et seq. (2001).

**13.1(2)** A label shall be affixed to a container in which a prescription drug is dispensed by a physician which shall include:

1. The name and address of the physician.
2. The name of the patient.
3. The date dispensed.
4. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician.
5. The name and strength of the prescription drug in the container.

**13.1(3)** The provisions of subrules 13.1(1) and 13.1(2) shall not apply to packaged drug samples.

**13.1(4)** A physician shall keep a record of all prescription drugs dispensed by the physician to a patient which shall contain the information required by subrule 13.1(2) to be included on the label. Noting such information on the patient's chart or record maintained by the physician is sufficient.

This rule is intended to implement Iowa Code sections 147.55, 148.6, 272C.3 and 272C.4.

**653—13.2(148,272C) Standards of practice—appropriate pain management.** This rule establishes standards of practice for the management of acute and chronic pain. The board encourages the use of adjunct therapies such as acupuncture, physical therapy and massage in the treatment of acute and chronic pain. This rule focuses on prescribing and administering controlled substances to provide relief and eliminate suffering for patients with acute or chronic pain.

1. This rule is intended to encourage appropriate pain management, including the use of controlled substances for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.

2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.

3. The board recognizes that pain management, including the use of controlled substances, is an important part of general medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.

4. Physicians should not fear board action for treating pain with controlled substances as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.

5. The board recognizes that the undertreatment of pain is a serious public health problem that results in decreases in patients' functional status and quality of life, and that adequate access by patients to proper pain treatment is an important objective of any pain management policy.

6. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.

**13.2(1) Definitions.** For the purposes of this rule, the following terms are defined as follows:

“*Acute pain*” means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

“*Addiction*” means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

“*Chronic pain*” means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain.

“*Pain*” means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

“*Physical dependence*” means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

“*Pseudoaddiction*” means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

“*Substance abuse*” means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

“*Tolerance*” means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

“*Undertreatment of pain*” means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

**13.2(2)** *Laws and regulations governing controlled substances.* Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations governing controlled substances.

**13.2(3)** *Undertreatment of pain.* The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use controlled substances for terminal pain due to the physician’s concern with addicting the patient, or a failure to use an adequate level of pain management.

**13.2(4)** *Assessment and treatment of acute pain.* Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute pain. Acute pain is not a diagnosis; it is a symptom. Prescribing controlled substances for the treatment of acute pain should be based on clearly diagnosed and documented pain. Appropriate management of acute pain should include an assessment of the mechanism, type and intensity of pain. The patient’s medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

**13.2(5)** *Effective management of chronic pain.* Prescribing controlled substances for the treatment of chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain. To ensure that chronic pain is properly assessed and treated, a physician who prescribes or administers controlled substances to a

patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

*a. Patient evaluation.* A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

*b. Treatment plan.* The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for controlled substances from a single physician and a single pharmacy whenever possible.

*c. Informed consent.* The physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient.

*d. Periodic review.* The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

*e. Consultation/referral.* A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultation may be appropriate. The physician should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

*f. Documentation.* The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

*g. Pain management agreements.* A physician who treats patients for chronic pain with controlled substances shall consider using a pain management agreement with each patient being treated that specifies the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with controlled substances. A physician who

prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. A sample pain management agreement and prescription drug risk assessment tools may be found on the board's Web site at [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov).

*h. Substance abuse history or comorbid psychiatric disorder.* A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

*i. Drug testing.* A physician who prescribes controlled substances to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.

*j. Termination of care.* The physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse.

**13.2(6) Pain management for terminal illness.** The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of opiates or controlled substances to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

**13.2(7) Prescription monitoring program.** The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. The board recommends that physicians utilize the prescription monitoring program when prescribing controlled substances to patients if the physician has reason to believe that a patient is at risk of drug abuse or diversion. A link to the prescription monitoring program may be found at the board's Web site at [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov).

**13.2(8) Pain management resources.** The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain. This list is provided for the convenience of licensees, and the publications included are not intended to be incorporated in the rule by reference.

*a.* American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

*b.* American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

*c.* American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

*d.* DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing

guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

*e.* Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain. In March 2007, the Washington State Agency Medical Directors' Group published an educational pilot to improve care and safety of patients with chronic, noncancer pain who are treated with opioids. The guidelines include opioid dosing recommendations.

*f.* Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

*g.* World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.  
[ARC 9599B, IAB 7/13/11, effective 8/17/11]

**653—13.3(147) Supervision of pharmacists who administer adult immunizations.** Rescinded ARC 1033C, IAB 10/2/13, effective 11/6/13.

**653—13.4(148) Supervision of pharmacists engaged in collaborative drug therapy management.** A supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The physician is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

**13.4(1) Definitions.**

*"Authorized pharmacist"* means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy (IBP) as specified in the drug therapy management criteria in 657—8.34(155A).

*"Board"* means the board of medicine of the state of Iowa.

*"Collaborative drug therapy management"* means participation by a physician and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

*"Collaborative practice"* means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a written community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital's clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital's P&T committee.

*"Community practice protocol"* means a written, executed agreement entered into voluntarily between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 13.4(2).

*"Community setting"* means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

*"Hospital clinic"* means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

*"Hospital pharmacist"* means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

*"Hospital practice protocol"* means a written plan, policy, procedure, or agreement that authorizes drug therapy management between physicians and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all physicians and hospital pharmacists at a hospital or the hospital's clinics under the direct authority of the hospital's

P&T committee or only to those physicians and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 13.4(3).

“*IBP*” means the Iowa board of pharmacy.

“*P&T committee*” means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician’s practice.

“*Therapeutic interchange*” means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

**13.4(2) Community practice protocol.**

a. A physician shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBP or a committee authorized by the IBP. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

b. The community practice protocol shall include:

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each physician who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the patient’s physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient’s physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the physician to secure the patient’s written consent. If the physician does not secure the patient’s written consent, the pharmacist shall secure such and notify the patient’s physician within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the physician, including but not limited to the need for new prescription orders and reports of the patient’s therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the physician requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or authorized pharmacist.

(17) A description of the mechanism for the pharmacist and physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

*c.* Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's physician and one authorized pharmacist.

*d.* A collaborative drug therapy management protocol must be filed with the IBP, kept on file in the pharmacy and made available to the board or IBP upon request. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

*e.* A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the IBP. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the IBP of changes in the protocol.

*f.* Patient consent for community practice protocols. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient needs to be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

**13.4(3) Hospital practice protocol.**

*a.* A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

*b.* Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

*c.* The hospital practice protocol shall include:

(1) The names or groups of physicians and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

This rule is intended to implement Iowa Code chapter 148.

**653—13.5(147,148) Standards of practice—chelation therapy.** Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147 and 148.

**653—13.6(79GA,HF726) Standards of practice—automated dispensing systems.** A physician who dispenses prescription drugs via an automated dispensing system or a dispensing system that employs technology may delegate nonjudgmental dispensing functions to staff assistants in the absence of a pharmacist or physician provided that the physician utilizes an internal quality control assurance plan that ensures that the medication dispensed is the medication that was prescribed. The physician shall be physically present to determine the accuracy and completeness of any medication that is reconstituted prior to dispensing.

**13.6(1)** An internal quality control assurance plan shall include the following elements:

*a.* The name of the physician responsible for the internal quality assurance plan and testing;

*b.* Methods that the dispensing system employs, e.g., bar coding, to ensure the accuracy of the patient's name and medication, dosage, directions and amount of medication prescribed;

*c.* Standards that the physician expects to be met to ensure the accuracy of the dispensing system and the training and qualifications of staff members assigned to dispense via the dispensing system;

*d.* The procedures utilized to ensure that the physician(s) dispensing via the automated system provide(s) patients counseling regarding the prescription drugs being dispensed;

*e.* Staff training and qualifications for dispensing via the dispensing system;

*f.* A list of staff members who meet the qualifications and who are assigned to dispense via the dispensing system;

*g.* A plan for testing the dispensing system and each staff member assigned to dispense via the dispensing system;

- h.* The results of testing that show compliance with the standards prior to implementation of the dispensing system and prior to approval of each staff member to dispense via the dispensing system;
- i.* A plan for interval testing of the accuracy of dispensing, at least annually; and
- j.* A plan for addressing inaccuracies, including discontinuing dispensing until the accuracy level can be reattained.

**13.6(2)** Those dispensing systems already in place shall show evidence of a plan and testing within two months of August 31, 2001.

**13.6(3)** The internal quality control assurance plan shall be submitted to the board of medicine upon request.

This rule is intended to implement Iowa Code section 147.107 and 2001 Iowa Acts, House File 726, section 5(10), paragraph “i.”

**653—13.7(147,148,272C) Standards of practice—office practices.**

**13.7(1)** *Termination of the physician-patient relationship.* A physician may choose whom to serve. Having undertaken the care of a patient, the physician may not neglect the patient. A physician shall provide a patient written notice of the termination of the physician-patient relationship. A physician shall ensure that emergency medical care is available to the patient during the 30-day period following notice of the termination of the physician-patient relationship.

**13.7(2)** *Patient referrals.* A physician shall not pay or receive compensation for patient referrals.

**13.7(3)** *Confidentiality.* A physician shall maintain the confidentiality of all patient information obtained in the practice of medicine. Information shall be divulged by the physician when authorized by law or the patient or when required for patient care.

**13.7(4)** *Sexual conduct.* It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

*a.* In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient’s parent or guardian if the patient is a minor.

*b.* A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.

*c.* A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

*d.* A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient’s parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

**13.7(5)** *Disruptive behavior.* A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

**13.7(6)** *Sexual harassment.* A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker’s performance or creates an intimidating, hostile or offensive work environment.

**13.7(7)** *Transfer of medical records.* A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient or by a legally designated representative of the subject patient, except as otherwise required or permitted by law.

**13.7(8)** *Retention of medical records.* The following paragraphs become effective on January 1, 2004.

a. A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.

b. A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for a period consistent with that established by Iowa Code section 614.8.

c. Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:

(1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written request, the records will be sent to the physician or entity of the patient's choice.

**653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons.** This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

**13.8(1) Definitions.** As used in this rule:

*"Alter"* means to change the cellular structure of living tissue.

*"Capable of"* means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

*"Damage"* means to cause a harmful change in the cellular structure of living tissue.

*"Delegate"* means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons.

*"Medical aesthetic service"* means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; botox injections; collagen injections; and tattoo removal.

*"Medical director"* means a physician who assumes the role of, or holds oneself out as, medical director or a physician who serves as a medical advisor for a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services to qualified licensed or certified nonphysician persons.

*"Medical spa"* means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

*"Nonsuperficial"* means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

*"Qualified licensed or certified nonphysician person"* means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another licensing board in Iowa and qualified to perform medical aesthetic services under the supervision of a qualified physician.

“*Supervision*” means the oversight of qualified licensed or certified nonphysician persons who perform medical aesthetic services delegated by a medical director.

**13.8(2) *Practice of medicine.*** The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons if the service has been delegated by the medical director who is responsible for supervision of the services performed. A medical director shall not delegate medical aesthetic services to nonphysician persons who are not appropriately licensed or certified in Iowa.

**13.8(3) *Medical director.*** A physician who serves as medical director at a medical spa shall:

- a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;
- b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;
- c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons;
- d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and
- e. Be clearly identified as the medical director in all advertising activities, Internet Web sites and signage related to the medical spa.

**13.8(4) *Delegated medical aesthetic service.*** When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons, the service shall be:

- a. Within the medical director’s scope of practice and medical competence to supervise;
- b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

**13.8(5) *Supervision.*** A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons is responsible for providing appropriate supervision. The medical director shall:

- a. Ensure that all licensed or certified nonphysician persons are qualified and competent to safely perform each medical aesthetic service by personally assessing the person’s education, training, experience and ability;
- b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person’s license or certification unless the person is supervised by a qualified supervising physician;
- c. Ensure that all qualified licensed or certified nonphysician persons receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;
- d. Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons;
- e. Be physically located, at all times, within 60 miles of the location where qualified licensed or certified nonphysician persons perform medical aesthetic services;
- f. Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons who perform medical aesthetic services, particularly in case of injury or an emergency;
- g. Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons who perform medical aesthetic services;
- h. Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving medical aesthetic services performed by qualified licensed or certified nonphysician persons;
- i. Ensure that all qualified licensed or certified nonphysician persons maintain accurate and timely medical records for the medical aesthetic services they perform;

*j.* Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or certified nonphysician persons and that such informed consent is timely documented in the patient's medical record;

*k.* Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians and all licensed or certified nonphysician persons are visibly displayed at each medical spa and provided in writing to each patient receiving medical aesthetic services at a medical spa; and

*l.* Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons who perform medical aesthetic services at a medical spa, within 14 days of a request by the board.

**13.8(6) Exceptions.** This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

**13.8(7) Physician assistants.** Nothing in these rules shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

[ARC 9088B, IAB 9/22/10, effective 10/27/10]

**653—13.9(147,148,272C) Standards of practice—interventional chronic pain management.** This rule establishes standards of practice for the practice of interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

**13.9(1) Definition.** As used in this rule:

“*Interventional chronic pain management*” means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain. Interventional techniques include percutaneous (through the skin) needle placement to inject drugs in targeted areas. Interventional techniques also include nerve ablation (excision or amputation) and certain surgical procedures. Interventional techniques often involve injection of steroids, analgesics, and anesthetics and include: lumbar, thoracic, and cervical spine injections, intra-articular injections, intrathecal injections, epidural injections (both regular and transforaminal), facet injections, discography, nerve destruction, occipital nerve blocks, lumbar sympathetic blocks and vertebroplasty, and kyphoplasty. Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient's chronic pain or when it is used to identify anatomic landmarks during interventional techniques. Specific interventional techniques include: SI joint injections; spinal punctures; epidural blood patches; epidural injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve blocks; axillary nerve blocks; intercostals nerve blocks; multiple intercostals nerve blocks; ilioinguinal nerve blocks; peripheral nerve blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.

**13.9(2) Interventional chronic pain management.** The practice of interventional chronic pain management shall include the following:

- a.* Comprehensive assessment of the patient;
- b.* Diagnosis of the cause of the patient's pain;
- c.* Evaluation of alternative treatment options;
- d.* Selection of appropriate treatment options;
- e.* Termination of prescribed treatment options when appropriate;
- f.* Follow-up care; and
- g.* Collaboration with other health care providers.

**13.9(3) Practice of medicine.** Interventional chronic pain management is the practice of medicine.

[ARC 8918B, IAB 6/30/10, effective 8/4/10]

**653—13.10(147,148,272C) Standards of practice—physicians who prescribe or administer abortion-inducing drugs.**

**13.10(1) Definition.** As used in this rule:

“*Abortion-inducing drug*” means a drug, medicine, mixture, or preparation, when it is prescribed or administered with the intent to terminate the pregnancy of a woman known to be pregnant.

**13.10(2) Physical examination required.** A physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman’s medical record, the gestational age and intrauterine location of the pregnancy.

**13.10(3) Physician’s physical presence required.** When inducing an abortion by providing an abortion-inducing drug, a physician must be physically present with the woman at the time the abortion-inducing drug is provided.

**13.10(4) Follow-up appointment required.** If an abortion is induced by an abortion-inducing drug, the physician inducing the abortion must schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided, 12 to 18 days after the woman’s use of an abortion-inducing drug to confirm the termination of the pregnancy and evaluate the woman’s medical condition. The physician shall use all reasonable efforts to ensure that the woman is aware of the follow-up appointment and that she returns for the appointment.

**13.10(5) Parental notification regarding pregnant minors.** A physician shall not induce an abortion by providing an abortion-inducing drug to a pregnant minor prior to compliance with the requirements of Iowa Code chapter 135L and rules 641—89.12(135L) and 641—89.21(135L) adopted by the public health department.

[ARC 1034C, IAB 10/2/13, effective 11/6/13]

**653—13.11(147,148,272C) Standards of practice—telemedicine.** This rule establishes standards of practice for the practice of medicine using telemedicine.

1. The board recognizes that technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.

2. Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.

3. The board advises that licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.

4. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

**13.11(1) Definitions.** As used in this rule:

“*Asynchronous store-and-forward transmission*” means the collection of a patient’s relevant health information and the subsequent transmission of the data from an originating site to a health care provider at a distant site without the presence of the patient.

“*Board*” means the Iowa board of medicine.

“*In-person encounter*” means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

“*Licensee*” means a medical physician or osteopathic physician licensed by the board.

“*Telemedicine*” means the practice of medicine using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology. Telemedicine shall not include the provision of medical services only through an audio-only telephone, e-mail messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof.

“*Telemedicine technologies*” means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.

**13.11(2) *Practice guidelines.*** A licensee who uses telemedicine shall utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The board acknowledges that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

**13.11(3) *Iowa medical license required.*** A physician who uses telemedicine in the diagnosis and treatment of a patient located in Iowa shall hold an active Iowa medical license consistent with state and federal laws. Nothing in this rule shall be construed to supersede the exceptions to licensure contained in 653—subrule 9.2(2).

**13.11(4) *Standards of care and professional ethics.*** A licensee who uses telemedicine shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the board.

**13.11(5) *Scope of practice.*** A licensee who uses telemedicine shall ensure that the services provided are consistent with the licensee’s scope of practice, including the licensee’s education, training, experience, ability, licensure, and certification.

**13.11(6) *Identification of patient and physician.*** A licensee who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

**13.11(7) *Physician-patient relationship.***

*a.* A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when:

- (1) The person with a health-related matter seeks assistance from a licensee;
- (2) The licensee agrees to undertake diagnosis and treatment of the person; and
- (3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.

*b.* A valid physician-patient relationship may be established by:

- (1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter;
- (2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient’s care; or
- (3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

**13.11(8) *Medical history and physical examination.*** Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An Internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview, does not constitute an acceptable medical

interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a licensee.

**13.11(9) *Nonphysician health care providers.*** If a licensee who uses telemedicine relies upon or delegates the provision of telemedicine services to a nonphysician health care provider, the licensee shall:

*a.* Ensure that systems are in place to ensure that the nonphysician health care provider is qualified and trained to provide that service within the scope of the nonphysician health care provider's practice;

*b.* Ensure that the licensee is available in person or electronically to consult with the nonphysician health care provider, particularly in the case of injury or an emergency.

**13.11(10) *Informed consent.*** A licensee who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

**13.11(11) *Coordination of care.*** A licensee who uses telemedicine shall, when medically appropriate, identify the medical home or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee shall provide a copy of the medical record to the patient's medical home or treating physician(s).

**13.11(12) *Follow-up care.*** A licensee who uses telemedicine shall have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

**13.11(13) *Emergency services.*** A licensee who uses telemedicine shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

**13.11(14) *Medical records.*** A licensee who uses telemedicine shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telemedicine encounter. The licensee shall ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner.

**13.11(15) *Privacy and security.*** A licensee who uses telemedicine shall ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act to ensure that all patient communications and records are secure and remain confidential.

*a.* Written protocols shall be established that address the following:

- (1) Privacy;
- (2) Health care personnel who will process messages;
- (3) Hours of operation;
- (4) Types of transactions that will be permitted electronically;
- (5) Required patient information to be included in the communication, including patient name, identification number and type of transaction;
- (6) Archiving and retrieval; and
- (7) Quality oversight mechanisms.

*b.* The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols shall include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

**13.11(16) *Technology and equipment.*** The board recognizes that three broad categories of telemedicine technologies currently exist, including asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services. While some telemedicine programs are

multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telemedicine shall comply with the following requirements:

*a.* The technology and equipment utilized in the provision of telemedicine services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

*b.* The technology and equipment utilized in the provision of telemedicine services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and

*c.* The technology and equipment utilized in the provision of telemedicine services must be compliant with the Health Insurance Portability and Accountability Act.

**13.11(17) *Disclosure and functionality of telemedicine services.*** A licensee who uses telemedicine shall ensure that the following information is clearly disclosed to the patient:

*a.* Types of services provided;

*b.* Contact information for the licensee;

*c.* Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;

*d.* Limitations in the drugs and services that can be provided via telemedicine;

*e.* Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;

*f.* Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);

*g.* Appropriate uses and limitations of the technologies, including in emergency situations;

*h.* Uses of and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;

*i.* To whom patient health information may be disclosed and for what purpose;

*j.* Rights of patients with respect to patient health information; and

*k.* Information collected and passive tracking mechanisms utilized.

**13.11(18) *Patient access and feedback.*** A licensee who uses telemedicine shall ensure that the patient has easy access to a mechanism for the following purposes:

*a.* To access, supplement and amend patient-provided personal health information;

*b.* To provide feedback regarding the quality of the telemedicine services provided; and

*c.* To register complaints. The mechanism shall include information regarding the filing of complaints with the board.

**13.11(19) *Financial interests.*** Advertising or promotion of goods or products from which the licensee(s) receives direct remuneration, benefit or incentives (other than the fees for the medical services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee(s) should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited. Licensees shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy.

**13.11(20) *Circumstances where the standard of care may not require a licensee to personally interview or examine a patient.*** Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a licensee may treat a patient who has not been personally interviewed, examined and diagnosed by the licensee:

*a.* Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;

*b.* For institutional settings, including writing initial admission orders for a newly hospitalized patient;

- c. Call situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- d. Cross-coverage situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- e. Situations in which the patient has been examined in person by an advanced registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;
- f. Emergency situations in which the life or health of the patient is in imminent danger;
- g. Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- h. Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention; and
- i. For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities and hospice settings.

**13.11(21)** *Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation—prohibited.* Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in subrule 13.11(20).

**13.11(22)** *Medical abortion.* Nothing in this rule shall be interpreted to contradict or supersede the requirements established in rule 653—13.10(147,148,272C).

This rule is intended to implement Iowa Code chapters 147, 148 and 272C.  
[ARC 1983C, IAB 4/29/15, effective 6/3/15]

**653—13.12(135,147,148,272C,280) Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility.**

**13.12(1)** Definitions. For purposes of this rule:

“*Authorized facility*” means any nonpublic school which is accredited pursuant to Iowa Code section 256.11, any school directly supported in whole or in part by taxation, a food establishment as defined in Iowa Code section 137F.1, a carnival as defined in Iowa Code section 88A.1, a recreational camp, a youth sports facility, or a sports area.

“*Epinephrine auto-injector*” means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

“*Physician*” means a person licensed pursuant to Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

**13.12(2)** Notwithstanding any other provision of law to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A.

**13.12(3)** A physician who prescribes epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A, provided the physician has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[ARC 2387C, IAB 2/3/16, effective 3/9/16]

**653—13.13 to 13.19** Reserved.

**653—13.20(147,148) Principles of medical ethics.** The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and

approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery and osteopathic medicine and surgery in this state.

**13.20(1) Conflict of interest.** A physician should not provide medical services under terms or conditions which tend to interfere with or impair the free and complete exercise of the physician's medical judgment and skill or tend to cause a deterioration of the quality of medical care.

**13.20(2) Fees.** Any fee charged by a physician shall be reasonable.

**653—13.21(17A,147,148,272C) Waiver or variance prohibited.** Rules in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]

[Filed 3/13/81, Notice 1/7/81—published 4/1/81, effective 5/6/81]

[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]

[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 6/6/90]

[Filed 3/22/96, Notice 9/27/95—published 4/10/96, effective 6/15/96]<sup>1</sup>

[Filed 11/22/96, Notice 8/28/96—published 12/18/96, effective 1/22/97]

[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]

[Filed 11/7/00, Notice 4/19/00—published 11/29/00, effective 1/3/01]

[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]

[Filed 2/16/01, Notice 12/27/00—published 3/7/01, effective 4/11/01]

[Filed emergency 8/31/01 after Notice 7/25/01—published 9/19/01, effective 8/31/01]

[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]

[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]

[Filed 1/3/03, Notice 11/27/02—published 1/22/03, effective 2/26/03]

[Filed 12/4/03, Notice 8/20/03—published 12/24/03, effective 1/28/04]

[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]

[Filed 5/3/06, Notice 2/15/06—published 5/24/06, effective 10/1/06]

[Filed 6/28/07, Notice 5/9/07—published 8/1/07, effective 9/5/07]

[Filed 4/3/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]

[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

[Filed ARC 8918B (Notice ARC 8579B, IAB 3/10/10), IAB 6/30/10, effective 8/4/10]

[Filed ARC 9088B (Notice ARC 8925B, IAB 6/30/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 9599B (Notice ARC 9414B, IAB 3/9/11), IAB 7/13/11, effective 8/17/11]

[Filed ARC 1033C (Notice ARC 0890C, IAB 7/24/13), IAB 10/2/13, effective 11/6/13]

[Filed ARC 1034C (Notice ARC 0891C, IAB 7/24/13), IAB 10/2/13, effective 11/6/13]

[Filed ARC 1983C (Notice ARC 1769C, IAB 12/10/14), IAB 4/29/15, effective 6/3/15]

[Filed ARC 2387C (Notice ARC 2249C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]

<sup>1</sup> Effective date of 13.2(148,272C) delayed 70 days by the Administrative Rules Review Committee at its meeting held May 14, 1996.

TITLE V  
INDIVIDUALCHAPTER 38  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—38.1(422) Definitions.**

**38.1(1)** When the word “*department*” appears herein, the word refers to and is synonymous with the “Iowa department of revenue”; the word “*director*” is the “director of revenue” or the director’s authorized assistants and employees.

The administration of the individual income tax is a responsibility of the department. The department is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

**38.1(2)** The term “*computed tax*” means the amount of tax remaining before deductions of the personal exemption credit and other credits in Iowa Code chapter 422, division II, and before the computation of the school district surtax and the emergency medical services income surtax.

**38.1(3)** The word “*taxpayer*” includes under this division:

- a. Every resident of the state of Iowa.
- b. Every part-year resident of the state of Iowa.
- c. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.
- d. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

**38.1(4)** The term “*fiduciary*” shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in Iowa Code section 422.4. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

**38.1(5)** The term “*employer*” means those who have a right to exercise control as to the performance of services as defined in Iowa Code section 422.4.

**38.1(6)** The term “*employee*” means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

**38.1(7)** The term “*wages*” means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for the employer. For this purpose, the word “wages” includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to ensure that the tax is available for payment. Vacation allowances and back pay, including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by the wage earner at any time, although not then actually reduced to possession.

**38.1(8)** The term “*responsible party*” shall have the same meaning as withholding agent as defined in Iowa Code section 422.4. A withholding agent includes an officer or employee of a corporation or association, or a member or employee of a partnership, who has the responsibility to perform acts covered by Iowa Code section 422.16. As of July 1, 1993, withholding agent also includes a member or a manager of a limited liability company who has the responsibility to perform acts covered by Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057. An individual who is a “responsible party” by law cannot shift that responsibility to someone else by attempting to delegate the responsibility to another corporate officer or employee.

Every business which is an employer must have some person who has the duty of withholding and paying those taxes which the law requires an employer to withhold and pay. There may be more than one person, but there must be at least one. The fact that any individual may not have been the only responsible person would not excuse that person from the responsibility of paying withholding taxes. Any withholding agent as defined in this subrule, who knowingly violates the statutory provisions of Iowa Code section 422.16, will be held liable for the tax due: *Pacific National Insurance Co. v. United States*, 1970, 9th Cir., 422 F.2d 26, cert. denied, 398 U.S. 937; *R. E. Dougherty v. United States*, 1971, 327 F. Supp. 202; *Gefen v. United States*, 5th Cir. 1968, 400 F.2d 476.

**38.1(9)** *Domicile*. Rescinded IAB 5/10/95, effective 6/14/95.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

#### **701—38.2(422) Statute of limitations.**

##### **38.2(1)** *Periods of audit.*

*a.* The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs “*b*,” “*c*,” “*d*,” “*e*,” “*f*” and “*g*.”

*b.* If a taxpayer fails to include in the taxpayer’s return items of gross income as defined in the Internal Revenue Code as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

*c.* If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

*d.* If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

*e.* While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

*f.* In addition to the periods of limitation set forth in paragraph “*a*,” “*b*,” “*c*,” “*d*,” or “*e*,” the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and

the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance*, 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

g. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

**38.2(2) Waiver of statute of limitations.** When the taxpayer and the department enter into an agreement to extend the period of limitation, interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

**38.2(3) Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.** If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.

#### **701—38.3(422) Retention of records.**

**38.3(1)** Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**38.3(2)** In addition, records relating to other deductions or additions to federal adjusted income and Iowa tax credits shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

[ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—38.4(422) Authority for deductions.** Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

#### **701—38.5(422) Jeopardy assessments.**

**38.5(1)** A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department

is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

**38.5(2)** A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

**701—38.6(422) Information deemed confidential.** Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.

**701—38.7(422) Power of attorney.** For information regarding power of attorney, see rule 701—7.34(421).

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—38.8(422) Delegations to audit and examine.** Pursuant to statutory authority, the director delegates to authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.70.

**701—38.9(422) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in an amount the director may fix, or in lieu of bond, securities approved by the director in an amount the director may prescribe and keep in the custody of the department. Pursuant to the statutory authorization in Iowa Code section 422.16, the director has determined that the following procedures will be instituted with regard to bonds. However, the bonding procedures were applicable only to nonresident employers or withholding agents for withholding taxes due prior to January 1, 1987. The penalty for failure of a withholding agent to file a bond, described in subrule 38.9(4) applies to taxes required to be withheld on or after January 1, 1990.

**38.9(1) When required.**

*a. New applications by withholding agents.* A new withholding agent applicant will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph "b" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

*b. Existing withholding agents.* Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the withholding agent can satisfy one of the conditions set forth in Iowa Code section 421.27.

*c. Waiver of bond.* If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or security, if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

**38.9(2) Type of security or bond.** When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. The officer or employee will be evaluated as provided in 38.9(1) "a" as if the officer or employee applied as the withholding agent as an individual.

**38.9(3) Amount of bond or security.** When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

**38.9(4) Penalty for failure of a withholding agent to file bond.** If the withholding agent is requested by the department to file a bond to secure collection of the state withholding tax and fails to file the bond, the withholding agent is subject to a penalty. The penalty for failure to file a bond is 15 percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty cannot exceed \$5000.

This rule is intended to implement Iowa Code section 422.16.

**701—38.10(422) Indexation.** Iowa Code section 422.5 provides for the adjustment of the tax brackets by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be \$60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.  
[ARC 1303C, IAB 2/5/14, effective 3/12/14]

**701—38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims.** A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule 701—7.8(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—38.12(422) Indexation of the optional standard deduction for inflation.** Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change,

but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—38.13(422) Reciprocal tax agreements.** Effective for tax years beginning on or after January 1, 2002, the department of revenue may, when the action has been approved by the general assembly and the governor, and when it is cost-efficient, administratively feasible, and of mutual benefit to Iowa and another state, enter into a reciprocal tax agreement with a tax administration agency of the other state. Under this agreement, income earned from personal services in Iowa by residents of the other state will be exempt from Iowa income tax if the other state provides an identical exemption from its state income tax for income earned in the other state from personal services by Iowa residents. For purposes of this rule, “income earned from personal services” includes wages, salaries, commissions, tips, deferred compensation, pensions, and annuities which were earned from personal services in Iowa by a resident of another state that had a reciprocal tax agreement with Iowa at the time the wages, salaries, commissions, tips, deferred compensation, pensions, or annuities were earned. See rule 701—40.45(422) for the treatment of deferred compensation, pensions, or annuities received by a nonresident of Iowa related to the documented retirement of a participant in a deferred compensation plan, a pensioner or an annuitant. The provisions of rule 701—40.45(422) supersede the definition of “income earned from personal services” under any reciprocal agreement as it relates to deferred compensation, pensions, or annuities.

**38.13(1) Reciprocal tax agreement with Illinois.** Pursuant to the authority of Iowa Code subsection 422.8(5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

*a.* No Illinois or Iowa employer is required to withhold Illinois income tax from compensation paid to an Iowa resident for personal services in Illinois.

*b.* No Illinois or Iowa employer is required to withhold Iowa income tax from compensation paid to an Illinois resident for personal services in Iowa.

*c.* Every Iowa employer who is subject to the jurisdiction of Illinois is liable to the state of Illinois for withholding of Illinois income tax from compensation paid to Illinois residents.

*d.* Every Illinois employer who is subject to the jurisdiction of Iowa is liable to the state of Iowa for the withholding of Iowa income tax from compensation paid to Iowa residents.

*e.* The Illinois department of revenue will encourage Illinois employers who are not subject to the jurisdiction of Iowa to withhold and remit Iowa income tax from wages paid to Iowa residents employed in Illinois.

*f.* The Iowa department of revenue will encourage Iowa employers who are not subject to the jurisdiction of Illinois to withhold and remit Illinois income tax from compensation paid to Illinois residents from employment in Iowa.

*g.* For purposes of the agreement, “compensation” means wages, salaries, commissions, tips, deferred compensation, pensions, and annuities and any other remuneration paid for personal services. In the case of deferred compensation, pensions, and annuities, those incomes are deemed to have been earned at the time of employment. Therefore, if an Illinois resident receives a pension or annuity from employment in Iowa at the time the reciprocal agreement was in effect, the pension or annuity income is not taxable to Iowa since it is “compensation” covered by the reciprocal agreement. See rule 701—40.45(422) for the treatment of deferred compensation, pensions, or annuities received by an Illinois resident related to the documented retirement of a participant in a deferred compensation

plan, a pensioner or an annuitant. The provisions of rule 701—40.45(422) supersede the definition of “compensation” under the reciprocal agreement with Illinois. “Compensation” does not include unemployment compensation benefits which an Illinois resident receives due to employment in Iowa.

*h.* No Iowa resident is required to pay Illinois income tax or file an Illinois return from compensation paid from personal services in Illinois.

*i.* No Illinois resident is required to pay Iowa income tax or to file an Iowa return on compensation for personal services in Iowa.

*j.* For purposes of the agreement, the term “Iowa resident” means an individual who is a resident under the laws of the state of Iowa, and the term “Illinois resident” means an individual who is a resident as defined in the Illinois Income Tax Act.

**38.13(2)** *Reciprocal tax agreements with states other than Illinois.* The Iowa department of revenue has not entered into reciprocal tax agreements with any state except the state of Illinois. See subrule 38.13(1).

This rule is intended to implement Iowa Code section 422.8 as amended by 2002 Iowa Acts, House File 2116, and section 422.15.

[ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—38.14(422) Information returns for reporting income payments to the department of revenue.** Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 38.14(1), shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, “every person” is every individual who is a resident of this state. For purposes of this rule, “every corporation” includes all corporations that have a place of business in this state.

**38.14(1)** *Incomes to be included in information returns.* The entities described in rule 701—38.14(422) are required to file information returns to the department of revenue on income payments of interest (other than interest coupons payable to the bearer), rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodic gains, profits, and income to the extent that the amount of income is great enough so that an information return on the income is required to be filed with the Internal Revenue Service (IRS) under provisions of the Internal Revenue Code. However, no reporting is required for payments of deferred compensation, pensions, and annuities to nonresidents of Iowa. In addition, no reporting is required for any type of income payment where information on the income payment is available to the department from the Internal Revenue Service.

**38.14(2)** *Information on income payments available from the Internal Revenue Service.* The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year. The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

- a.* 1065 K-1.
1. Dividends.
  2. Interest.
  3. Tax withheld.
  4. Royalties.
  5. Ordinary income or (loss).
  6. Real estate income or (loss).
  7. Other rental income or (loss).
  8. Other portfolio income or (loss).
  9. Guaranteed payments.

- b.* K-1 1041.
  - 1. Dividends.
  - 2. Interest.
  - 3. Other taxable income or (loss).
  - 4. Tax withheld.
  
- c.* K-1 1120-S.
  - 1. Dividends.
  - 2. Interest.
  - 3. Tax withheld.
  - 4. Royalties.
  - 5. Ordinary income.
  - 6. Real estate.
  - 7. Other rental.
  - 8. Other portfolio.
  
- d.* 1099-S.
  - 1. Real estate sales.
  
- e.* 1099-B.
  - 1. Aggregate profit and loss.
  - 2. Realized profit and loss.
  
- f.* 1098.
  - 1. Mortgage interest.
  
- g.* 1099-G.
  - 1. Tax withheld.
  - 2. Taxable grant.
  - 3. Unemployment compensation.
  - 4. Agricultural subsidies.
  
- h.* 1099-DIV.
  - 1. Dividends.
  - 2. Tax withheld.
  - 3. Capital gains.
  - 4. Cash liquid distribution.
  - 5. Noncash liquid distribution.
  - 6. Investment expense.
  - 7. Ordinary dividends.

- i. 1099-INT.
  - 1. Interest.
  - 2. Tax withheld.
  - 3. Savings bonds.
  - 4. Interest forfeiture.
  - 5. Tax-exempt interest.

This rule is intended to implement Iowa Code section 422.15.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse.** Married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return form. However, a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of tax that is attributable to erroneous items of the other spouse.

**38.15(1) Filing status for return with an innocent spouse.** For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate return that has been accepted by the state will not be eligible for innocent spouse status.

**38.15(2) Scope of relief for Iowa income tax purposes.** An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

**38.15(3) Presumption and burden of proof when requesting innocent spouse relief.**

*a. Presumption.* The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

*b. Request without Internal Revenue Service approval.* If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

**38.15(4) Time period for requesting innocent spouse relief.** For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action against the person claiming innocent spouse relief. However, an extended time period to request equitable relief for innocent spouses under Section 6015(f) of the Internal Revenue

Code can be granted under the provisions of Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.

[ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2393C, IAB 2/3/16, effective 3/9/16]

**701—38.16(422) Preparation of taxpayers' returns by department employees.** A department employee can assist a taxpayer in the preparation and completion of the taxpayer's individual income tax returns and other state tax returns during the employee's hours of employment for the department in either of the following situations:

1. At the time the department employee is conducting an audit of the taxpayer.
2. When the department employee is requested to prepare a taxpayer's individual income tax return or other tax returns by the taxpayer, the taxpayer's spouse, or the taxpayer's authorized representative.

This rule is intended to implement Iowa Code section 421.17.

**701—38.17(422) Resident determination.** For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a permanent place of abode within the state, or (2) the individual is domiciled in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

**38.17(1) Permanent place of abode.** The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

**38.17(2) Domicile.** An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d,

329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

*a.* There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

- (1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either
- (2) Claims a homestead credit or military tax exemption on a home in Iowa, or
- (3) Is registered to vote in Iowa, or
- (4) Maintains an Iowa driver's license, or
- (5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

*b.* There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

- (1) Does not claim a homestead credit or military exemption on a home in Iowa,
- (2) Is not registered to vote in Iowa,
- (3) Does not maintain an Iowa driver's license,
- (4) Is in Iowa less than 183 days of the tax year; and
- (5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

*c.* In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

- (1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.
- (2) Maintains an Iowa driver's license.
- (3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.
- (4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.
- (5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.
- (6) Vehicles registered in Iowa.
- (7) Location of employment or active participation in a business within Iowa.
- (8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.
- (9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.
- (10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

**38.17(3)** *Resident determination for individuals on active duty military service.* The Soldiers and Sailors Civil Relief Act provides in 50 U.S.C. Appx § 574(1) that members of the armed forces of the United States shall not be deemed to have lost a residence or domicile in any state, solely by being absent from that state in compliance with military or naval orders, or to have acquired a residence or domicile in another state while being absent from the state of residence. Thus, residents of Iowa who enter military service will retain their Iowa residence during the tenure of their military service or until they take positive action to change their state of residence.

For tax years beginning prior to January 1, 2011, residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422) regarding the exemption of active duty pay for both resident and nonresident members of the armed forces, armed forces military reserve, or the national guard.

Military personnel who are residents of other states and who come to Iowa as a result of military or naval orders, but who later decide to become legal or actual residents of Iowa, or military personnel who purchase residential property in Iowa and claim homestead credits or the military exemption for the property for property tax purposes are presumed to be residents of Iowa for income tax purposes.

Military personnel who are not residents of the state of Iowa and who receive military pay for service in Iowa shall not be considered to have received this income for services performed within Iowa or from sources within Iowa. These nonresidents of Iowa will be taxable on nonmilitary wages for personal services in Iowa they receive while stationed in Iowa. These individuals will also be taxable to Iowa on incomes they receive from businesses, trades, professions, or occupations operated in Iowa during the time they are stationed in Iowa as well as on nonmilitary incomes from any other sources within Iowa.

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa's taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—42.5(422). This exclusion from the computation of the nonresident credit applies to military pay of nonresident servicemembers who are in an active duty status as defined under Title 10 of the United States Code.

For tax years beginning before January 1, 2009, spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives. For tax years beginning on or after January 1, 2009, spouses who earn wages from Iowa sources are not subject to Iowa income tax on these wages if one spouse who is present in Iowa is a member of the armed forces, the other spouse is present in Iowa solely to be with the military spouse, and the spouse who is a member of the armed forces maintains a domicile in another state. This treatment for tax years beginning on or after January 1, 2009, is required by the Military Spouses Residency Relief Act, Public Law No. 111-97.

**38.17(4) Examples of resident determination.**

a. Fred and Mary were domiciled in Iowa when Fred retired in 1994. They have a house in Iowa and a condominium in Florida. Prior to 1994, Fred and Mary spent approximately four months in Florida and the remaining eight months in Iowa. Fred owned a small business when he retired and was retained as a consultant and remained a member of the board of directors after retirement. Fred and Mary have friends and family in both Iowa and Florida. They are also involved in the activities of the

local country club as well as other civic and service organizations in both locations. When Fred retired, he and Mary decided to spend more time in Florida, especially during the winter months. They usually leave for Florida in late October and return to Iowa in early April. They have transferred their automobile registrations to Florida and they have acquired Florida driver's licenses. They have registered to vote in Florida and have voted in Florida elections. They visit doctors and dentists in both locations as the need arises. They maintain bank accounts in both locations and have mail sent to the location at which they are physically residing. Fred and Mary usually return to Iowa for the Thanksgiving and Christmas holidays and Fred returns once a month to attend board meetings. They do not claim a homestead credit or military tax exemption on their Iowa home, but they do use their Iowa address on most of their legal documents and on their federal tax return. They also travel and vacation during the winter months and oftentimes leave Florida to vacation.

Fred and Mary would be considered Iowa residents because they have retained a permanent abode in Iowa.

*b.* Susan takes an apartment in Des Moines when her employer assigns her to the region office of a large accounting firm for a temporary period. She spends more than 183 days in Iowa, but she returns to her apartment in Ohio once a month to visit her friends and to check her mail. She intends to return to Ohio when her assignment in Des Moines is terminated. She has retained her Ohio driver's license and she is registered to vote in Ohio.

Susan would not be considered to be an Iowa resident because she has not established a "permanent" place of abode in Iowa, even though she is present in Iowa for more than 183 days. Also, she has not had a definite abandonment of her former domicile. Susan would be taxed on her Iowa income as a nonresident. However, if Susan was assigned to Des Moines on a permanent basis, she may be considered an Iowa resident even though she retains her apartment in Ohio.

*c.* John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

*d.* Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

*e.* Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9822B, IAB 11/2/11, effective 12/7/11; ARC 1303C, IAB 2/5/14, effective 3/12/14]

**701—38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return.** For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported \$7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that \$4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a \$5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The \$5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of \$440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the \$5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

**701—38.19(422) Indication of dependent child health care coverage on tax return.** For tax years beginning on or after January 1, 2008, but before January 1, 2010, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph "c," is claimed. For tax years beginning on or after January 1, 2008, but before January 1, 2010, it is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return. For tax years beginning on or after January 1, 2010, it is mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent. The Iowa return will not be considered complete until the indication of the presence or absence of health care coverage for each dependent is made on the return.

**38.19(1) Definition of health care coverage.** Health care coverage includes the following:

- a. Private health care coverage provided through an employer, a relative's employer, or through a union.
- b. Private health care coverage purchased by an individual from a private company.
- c. Government health care coverage provided through the state Medicaid program set forth in Iowa Code chapter 249A, or the HAWK-I (healthy and well kids in Iowa) program set forth in Iowa Code chapter 514I.

d. Government health care coverage provided by the military including the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS) and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

e. Government health care coverage provided by the United States Department of Health and Human Services to eligible American Indians under the Indian Health Service program.

**38.19(2) Notification to the taxpayer.** If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also provide the address for a Web site which has an online application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The letter will also include the telephone number to call to request a paper application. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

**38.19(3) Reporting requirements.** The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

a. Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph “c.”

b. The number of Iowa families, by income level, who claim the personal exemption credit and whether they indicated the presence or absence of health care coverage for their dependent children.

c. The number of Iowa families, by income level, claiming the personal exemption credit who received enrollment information from the department of revenue and who subsequently applied and were enrolled in either the Medicaid or HAWK-I program.

This rule is intended to implement Iowa Code section 422.12M as amended by 2009 Iowa Acts, Senate File 389, section 15.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]

[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]

[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]

[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]

[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]

[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]

[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]

[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]

[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]

[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]

[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]

[Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]  
[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]<sup>◇</sup>  
[Filed 4/21/95, Notice 3/1/95—published 5/10/95, effective 6/14/95]  
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]  
[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]  
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]  
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]  
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]  
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]<sup>◇</sup>  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]  
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9822B (Notice ARC 9739B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 0251C (Notice ARC 0145C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]  
[Filed ARC 1303C (Notice ARC 1231C, IAB 12/11/13), IAB 2/5/14, effective 3/12/14]  
[Filed ARC 1665C (Notice ARC 1590C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]  
[Filed ARC 2393C (Notice ARC 2299C, IAB 12/9/15), IAB 2/3/16, effective 3/9/16]

<sup>◇</sup> Two or more ARCs

CHAPTER 101  
FARM-TO-MARKET REVIEW BOARD

**761—101.1(306) Purpose.** The purpose of these procedural rules is to formalize the process by which the farm-to-market review board, created by Iowa Code section 306.6, will administer its duties.

**101.1(1)** Iowa Code section 306.6 requires the farm-to-market review board to make final administrative decisions based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

**101.1(2)** Iowa Code section 306.6A requires the farm-to-market review board to adopt procedural rules for modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment. These rules implement this requirement.

**101.1(3)** Iowa Code section 306.5 states that the farm-to-market road system shall be a continuous, interconnected system and that provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas.

**761—101.2(306) Definitions.**

*“Area service roads”* or *“local roads”* or *“local road system”* means those secondary roads that are not a part of the farm-to-market road system.

*“Board”* means the farm-to-market review board.

*“Executive board”* means the Iowa county engineers association executive board.

*“Farm-to-market extensions”* means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system shall be included in the total mileage of the farm-to-market road system.

*“Farm-to-market roads”* or *“farm-to-market road system”* means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed 35,000 miles.

*“President”* means the president of the Iowa county engineers association.

**761—101.3(306) Composition and membership of the farm-to-market review board.**

**101.3(1)** The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Board rotation shall be as follows and shall be extended in future years in the same pattern:

Year	Rotation	
2015	District 1 Representative A	District 4 Representative A
2016	District 2 Representative A	District 5 Representative A
2017	District 3 Representative A	District 6 Representative A
2018	District 1 Representative B	District 4 Representative B
2019	District 2 Representative B	District 5 Representative B
2020	District 3 Representative B	District 6 Representative B

**101.3(2)** Members shall be nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer’s district.

If a county engineer is unable to complete a term for any reason, the president shall select another county engineer within the district to serve the balance of the term.

**101.3(3)** The farm-to-market review board shall select from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair shall preside at a meeting in the absence of the chair.

[ARC 2392C, IAB 2/3/16, effective 3/9/16]

**761—101.4(306) Collection of system modification requests and frequency of meetings.**

**101.4(1)** The department of transportation will collect applications for modifications to the farm-to-market road system. The board chair shall schedule meetings of the board. In general, the farm-to-market review board shall meet in conjunction with statewide meetings of the Iowa state association of counties and Iowa county engineers association to review accumulated applications for farm-to-market road system modifications. Applications must be filed no less than 30 days prior to each scheduled board meeting. Additional board meetings shall be called as determined by the chair.

**101.4(2)** The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the Iowa County Engineers Association Service Bureau Web site and send copies of the agenda to all counties.

**101.4(3)** Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be recorded to facilitate the preparation of meeting minutes, but any recordings made shall not be retained after the minutes have been completed.

[ARC 2392C, IAB 2/3/16, effective 3/9/16]

**761—101.5(306) Procedure for requesting modifications to the farm-to-market road system.** To apply for a modification to the farm-to-market road system, a county must file an application through the department of transportation.

**101.5(1)** The application must include the following:

*a.* A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

*b.* A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

**101.5(2)** In the case of intercounty routes, joint applications may be filed. Resolutions shall be required of each county.

**761—101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system.**

**101.6(1)** The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

**101.6(2)** The board shall consider the following factors in making decisions to modify the farm-to-market road system:

- a.* Intracounty and intercounty continuity of systems.
- b.* Properly integrated systems.
- c.* Existing and potential traffic.
- d.* Land use.
- e.* Location of the route.
- f.* Equitable distribution of farm-to-market mileage.

**761—101.7(306) Voting and approval of requested modifications.** Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include

members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

**101.7(1) *Determination of a quorum.*** A minimum of eight board members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

**101.7(2) *Number of votes needed to approve or deny a modification.*** For a requested modification to the farm-to-market road system to be approved, it must receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification need only receive six votes for the denial to be approved.

**761—101.8(306) Report of board decision to applicant county.** Within 30 calendar days after a board meeting, the chair shall send a letter to each county whose request was acted upon by the board at the meeting. The letter shall apprise each applicant of the decision of the farm-to-market review board, briefly explain the reasons for the board's decision, and explain the reapplication and judicial review processes.

**761—101.9(306) Reapplication for modification.** A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county must again follow all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials may not be resubmitted for consideration for a minimum of three years.

**761—101.10(306) Judicial review.** Any county that is aggrieved or adversely affected by a decision of the farm-to-market review board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

**761—101.11(306) Adoption and modification of rules.** The chair shall direct the board to review these rules annually. Board members may recommend changes to these rules.

**761—101.12(306) Severability clause.** If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]

[Filed ARC 2392C (Notice ARC 2248C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]



## VOTER REGISTRATION COMMISSION[821]

Prior to 3/21/90, Voter Registration Commission[845]

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CHAPTER 2  
VOTER REGISTRATION FORMS, ACCEPTABILITY,  
REGISTRATION DATES, AND EFFECTIVE DATES

[Prior to 3/21/90, see Voter Registration Commission[845], Ch 2]

**821—2.1(48A) Voter registration forms.**

**2.1(1) Content and completion.**

*a.* In addition to the spaces required by Iowa Code section 48A.11, every voter registration form shall include room for the county commissioner to make notations indicating such items as the date the form was received, the precinct and school district of the registrant, any other special district or note deemed necessary or appropriate by the commissioner, and the date the registration is effective. The notations may be on the reverse of the form.

*b.* The spaces on the paper voter registration form required by Iowa Code section 48A.11 and subrule 2.1(1) may be completed electronically. Voter registration forms completed electronically must be printed and, in the event adhesive labels are used, such labels must be firmly affixed to the form. The form must also be signed and dated by the voter.

**2.1(2) Definitions.**

*“Agency application”* means an application received at a voter registration agency pursuant to Iowa Code section 48A.19.

*“Application”* means a request to register to vote from a person who is not registered to vote in the county where the voter registration form is submitted. An application shall be made on a voter registration form prescribed by the voter registration commission.

*“By-mail application”* means an application received through the mail from an individual applicant. *“By-mail application”* also includes voter registration applications received from organizations that solicit voter registrations. *“By-mail application”* does not include registration forms sent through the mail by voter registration agencies.

*“In-person application”* means an application received in person from the applicant either by the registrar, the registrar’s designee, the commissioner, the commissioner’s designee or a precinct election official.

*“New voter registration application”* means a voter registration application received from an individual who is not already registered to vote in the county.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.2(48A) Agency code.** In addition to the spaces and statements required to be included on registration forms by Iowa Code section 48A.11 and rule 821—2.1(48A), registration forms used by voter registration agencies shall contain a code, to be devised by the registrar, indicating the type of agency.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.3(48A) Federal mail-in application.** Rules 821—2.1(48A) and 821—2.2(48A) do not apply to the mail voter registration form prescribed by the federal election commission, which shall be accepted in accordance with Iowa Code section 48A.12 and shall not be used by voter registration agencies.

**821—2.4(48A) Paperless (electronic) registration forms.** Any voter registration agency and the office of driver services, department of transportation, may devise a system of collecting registration applications without using paper forms, in accordance with the following restrictions:

**2.4(1)** All information required to be disclosed on a voter registration form shall be collected by the agency and captured electronically. The applicant shall also be asked to disclose the optional information solicited by the form if that information is not captured as a part of the agency’s own record-making process.

**2.4(2)** The applicant shall be shown a list of the eligibility requirements for registering to vote and the penalties for falsely registering, printed or displayed in large, easy-to-read type, and shall be advised to read them.

**2.4(3)** The application to register to vote and the signature of the applicant shall be recorded in digitized form in the agency's computer system and shall be kept permanently by the agency. The system shall ensure that neither the application information nor the signature, once captured, can be edited.

**2.4(4)** The agency shall develop procedures so that the digitized signature can be retrieved and reproduced on paper. Within three working days of receipt of an order from a state or federal court, the agency shall provide a reproduction of the requested application and signature.

**2.4(5)** The agency shall transmit electronic registration records to the registrar in accordance with 821—Chapter 8.

**2.4(6)** In the case of a voter registration applicant who registers to vote online through the Web site of the office of driver services, department of transportation, the applicant's signature for voter registration purposes shall be the last signature on file with the office of driver services, department of transportation. If there is no signature on file with the office of driver services, department of transportation, the applicant shall be offered the opportunity to print, complete, sign and return a paper copy of the Iowa voter registration application.

[ARC 2376C, IAB 2/3/16, effective 1/5/16]

**821—2.5(48A) Acquisition of registration forms.** To ensure that forms used by the various voter registration agencies contain no distinguishing characteristics that could be used to identify the agency from which the form came, all agency forms shall be ordered through the state registrar of voters. The registrar shall negotiate a contract for the procurement of the forms in accordance with all procurement laws and rules.

**821—2.6(48A) Production of forms.** Any person or organization, except voter registration agencies, may cause the printing and production of voter registration applications. Applications so produced shall be identical in size, shape, weight and similar in color of paper, type size, and color of ink to those available from the registrar, except that the independently produced applications may not contain an agency type code, may be preaddressed to a particular county commissioner on the reverse of the form, and may contain postage. This rule shall not apply to voter registration forms printed in newspapers or telephone books.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.7(48A) Availability of forms.** Voter registration applications shall be available for purchase, at the cost of production, from the state registrar of voters. Application forms for an individual's personal use shall be available free of charge at the office of the registrar, all voter registration agencies, and the office of driver services, department of transportation.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.8(48A) Incomplete applications.**

**2.8(1)** No commissioner shall refuse to register or accept an application from an applicant unable to specify the correct ward, precinct, or school district for the applicant's address. The commissioner shall make a determination of the correct political subdivisions from maps, legal descriptions, and other means at the commissioner's disposal.

**2.8(2)** The notice mailed to applicants who submit incomplete voter registration applications shall instruct the applicant that the applicant may provide the required information in writing by appearing in person at the commissioner's office to complete a new application or by mailing a new and complete application. If the incomplete registration application is received during the period in which registration is closed pursuant to Iowa Code section 48A.9 and by 5 p.m. on the Saturday before the election for general elections or by 5 p.m. on the Friday before the election for all other elections, the commissioner shall send a notice advising the applicant of election day and in-person absentee registration procedures under Iowa Code section 48A.7A.

**2.8(3)** If the application does not include the applicant's Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or the last four digits of the applicant's social security number, and the applicant has not indicated that the applicant does

not have any of these numbers, the notice described in subrule 2.8(2) shall also include the following statement:

“Your voter registration application cannot be accepted because it does not include an Iowa driver’s license number, an Iowa nonoperator’s identification number or the last four numbers of your social security number. You must submit a new voter registration form before you can be registered to vote in this county.

“If you have an Iowa driver’s license, you must write that number on your voter registration form. If you do not have an Iowa driver’s license, use the number from your Iowa nonoperator’s identification card. If you do not have an identification card issued by the state of Iowa, write the last four numbers of your social security number on the form. If you don’t have any of these identification numbers, please check the box next to ‘NONE’ on the form. Please note it is a Class ‘D’ felony to provide false information on a voter registration application.”

**2.8(4)** If the applicant reports that the applicant has not been issued an Iowa driver’s license, an Iowa department of transportation-issued nonoperator’s identification card number, or a social security number, the commissioner shall assign a unique identifying number that shall serve to identify the registrant for voter registration purposes and code the registration status as “pending.”

**2.8(5)** The commissioner shall keep an incomplete application for voter registration for 22 months after the date of the next general election after the application was received.

[ARC 7883B, IAB 7/1/09, effective 7/1/09; ARC 2376C, IAB 2/3/16, effective 1/5/16]

**821—2.9(48A) Optional data not required.** No commissioner shall refuse to register or accept an application from an applicant who fails or declines to reveal the applicant’s telephone number or political party affiliation.

**821—2.10(48A) Alternate (nonmailable) registration forms.** An alternate registration form is authorized for the use of voter registration agencies and nongovernmental organizations engaging in registration programs and registration drives. The form shall contain spaces for all of the required and optional information solicited by the standard form, a list of the qualifications to register to vote, a statement to be signed by the applicant that the applicant is eligible to register to vote, and a statement of the penalty for submission of a false voter registration form. The face of the form shall contain spaces for all the personal information asked of the applicant, along with the attestation and warning. The reverse of the form may contain the list of qualifications, and may contain space for the county commissioner’s notations. The form may be printed as a detachable part of a larger piece or may be printed by itself. Because registration forms are frequently kept for many years, registration forms shall be printed on paper at least as thick as 20-pound xerographic paper.

The intent of this rule is to make available a mechanism for individuals, groups and organizations to conduct registration drives without requiring individuals, groups and organizations to purchase registration forms. To that end, the state registrar shall make available, without charge, a limited quantity of forms as determined by the voter registration commission, and PDF versions of a form meeting the requirements of this rule.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.11(48A) Registration forms in languages other than English.** Rescinded IAB 7/1/09, effective 7/1/09.

**821—2.12(48A) County registration date.** For the purposes of determining timeliness of an application to register to vote, the county registration date shall be determined as follows:

**2.12(1)** The county registration date for an in-person applicant at least 18 years of age is the date the registration application is received by the commissioner or the commissioner’s designee. However, when preregistration is closed in the applicant’s precinct due to a pending election, the county registration date shall be the date of the day after the pending election unless the applicant registers pursuant to Iowa Code section 48A.7A.

**2.12(2)** The county registration date for a by-mail applicant at least 18 years of age is the date the registration application is received by the commissioner, unless the application is postmarked on or before the worry-free postmark date established pursuant to Iowa Code section 48A.9, subsection 3. However, when preregistration is closed in the applicant's precinct due to a pending election, the county registration date shall be the date of the day after the pending election unless the applicant registers pursuant to Iowa Code section 48A.7A.

**2.12(3)** The county registration date for an application received from a source other than in person or by mail is the date the application is received by the commissioner or submitted to the office of driver services, department of transportation, or to a voter registration agency pursuant to Iowa Code section 48A.19, whichever is earlier.

**2.12(4)** The county registration date for applicants aged 17 ½ to 18 shall be the date of the applicant's eighteenth birthday. However, when preregistration is closed in the applicant's precinct on the applicant's eighteenth birthday, the county registration date shall be the date of the day after the pending election unless the applicant registers pursuant to Iowa Code section 48A.7A.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.13(48A) Effective date of registration.** Rescinded IAB 7/1/09, effective 7/1/09.

**821—2.14(48A) Voter registration status codes.** Voter registration records shall be coded to show the status of the record.

**2.14(1) Active.** The registration is in good standing. No action is required on the part of either the registrant or the commissioner.

**2.14(2) Inactive.** If either an acknowledgment mailed to the registrant pursuant to Iowa Code section 48A.26 as amended by 2009 Iowa Acts, House File 475, section 17, a notice mailed to the registrant pursuant to Iowa Code section 48A.27 as amended by 2009 Iowa Acts, House File 475, section 18, a notice mailed to the registrant pursuant to Iowa Code section 48A.28 or an absentee ballot mailed to the registrant pursuant to Iowa Code section 53.8 is returned to the commissioner by the United States Postal Service as undeliverable, the registrant's status shall be changed to "inactive" status. In addition, a voter registration record shall be made "inactive" pursuant to Iowa Code section 48A.27, subsection 4, paragraph "c," as amended by 2009 Iowa Acts, House File 475, section 18, during the annual NCOA process. Inactive registrations will be deleted after two general elections unless the registrant responds to a confirmation mailing pursuant to Iowa Code section 48A.27 as amended by 2009 Iowa Acts, House File 475, section 17, 48A.28, 48A.29 or 48A.30, requests an absentee ballot, votes in an election or submits a registration form updating the registration. Inactive registrants shall show identification when voting in person at the polling place, pursuant to Iowa Code section 49.77(3) as amended by 2009 Iowa Acts, House File 475, section 33, or shall restore their voter registration to "active" status pursuant to 721—21.301(53) when voting by absentee ballot.

**2.14(3) Pending.**

*a.* No DL or SSN Provided. If an applicant indicates that the applicant does not have an Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or a social security number, the applicant shall be assigned a status of "pending" with reason "No DL or SSN Provided."

*b.* DL or SSN Not Verified. If the applicant provides an Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or the last four digits of the applicant's social security number and that information cannot be verified pursuant to 821—2.15(48A), the applicant shall be assigned a status of "pending" with reason "DL or SSN Not Verified."

*c.* An applicant assigned a status of "pending" shall not be activated until the applicant provides identification pursuant to 721—21.3(49,48A).

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.15(48A) Verification of voter registration information.** All new voter registration applications shall be verified. The registrar may arrange with the department of transportation for county

commissioners of elections to verify voter registration records without submitting the registration information to the registrar.

**2.15(1)** When the application is received, the commissioner shall compare the Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or the last four digits of the social security number of each mail application with the records of the department of transportation.

**2.15(2)** All of the following information on the application must match an existing record:

*a.* All digits and numerals in the Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or the last four digits of the social security number.

*b.* Name.

*c.* Date of birth, including the month, day and year.

**2.15(3)** If all three required elements do not match, the applicant shall be assigned a status of "pending" with reason "DL or SSN Not Verified." The applicant shall be notified that the applicant's voter registration is in pending status and the applicant will be required to show identification pursuant to 721—21.3(49,48A) before voting in the county. The notice shall include the following statement:

"Your voter registration application is pending because the information you provided on your application could not be verified. Your name, date of birth and identification number were compared to the Iowa driver's license records and your identification number cannot be verified.

"Before voting for the first time in this county, you will be required to show identification. You may submit identification either by showing your identification in person when you vote or by mailing a photocopy of your identification to the county auditor's office."

**2.15(4)** If the application is verified, the registration record shall be made "active." The registrar or commissioner shall keep records showing whether the information in the application was verified and the date of the verification. If the application cannot be verified, the record shall show what information on the application did not match an existing record. The verification record shall be kept for the period of time required in Iowa Code section 48A.32.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—2.16(47,48A) Form of official Iowa voter registration application.** The official Iowa voter registration application pursuant to Iowa Code section 48A.11 shall be the State of Iowa Official Voter Registration Form Revised 4/9/2014.

[ARC 0807C, IAB 6/26/13, effective 8/1/13; ARC 1361C, IAB 3/5/14, effective 4/9/14]

These rules are intended to implement Iowa Code chapter 48A.

[Filed emergency 6/2/76—published 6/28/76, effective 6/2/76]

[Filed 7/24/78, Notice 6/14/78—published 8/9/78, effective 9/13/78]

[Filed 2/20/80, Notice 12/26/79—published 3/5/80, effective 4/9/80]

[Filed emergency after Notice 7/27/82, Notice 6/9/82—published 8/18/82, effective 7/27/82]

[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]

[Filed emergency after Notice 8/22/84, Notice 7/18/84—published 9/12/84, effective 8/22/84]

[Filed 1/24/86, Notice 12/4/85—published 2/12/86, effective 3/19/86]

[Filed emergency 9/4/86—published 9/24/86, effective 9/4/86]

[Filed 8/30/89, Notice 4/5/89—published 9/20/89, effective 10/25/89]

[Filed 3/1/90, Notice 9/6/89—published 3/21/90, effective 4/25/90]

[Filed 10/12/90, Notice 9/19/90—published 10/31/90, effective 12/5/90]

[Filed 11/4/94, Notice 9/28/94—published 11/23/94, effective 1/5/95]

[Filed emergency 10/6/95—published 10/25/95, effective 10/6/95]

[Filed 1/29/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]

[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/10/04]

[Filed Emergency ARC 7883B, IAB 7/1/09, effective 7/1/09]

[Filed Without Notice ARC 0807C, IAB 6/26/13, effective 8/1/13]

[Filed ARC 1361C (Notice ARC 1281C, IAB 1/8/14), IAB 3/5/14, effective 4/9/14]

[Filed Emergency After Notice ARC 2376C (Notice ARC 2160C, IAB 9/30/15; Amended Notice ARC 2246C, IAB 11/25/15), IAB 2/3/16, effective 1/5/16]

CHAPTER 8  
TRANSMISSION OF REGISTRATION FORMS BY AGENCIES

**821—8.1(48A) Transmission of electronic voter registration applications.** Every agency that registers voters in a paperless manner shall transmit a file of registration applications to the registrar on a daily basis. The file shall contain all voter registration applications collected by the agency during the previous working day.

[ARC 2376C, IAB 2/3/16, effective 1/5/16]

**821—8.2(48A) Data elements of paperless voter registration transactions.** The file specified in rule 8.1(48A) shall contain the following information:

1. The number of the county in which the applicant lives;
2. The applicant's Iowa driver's license number, if the applicant has one. If not, the applicant's Iowa department of transportation-issued nonoperator's identification card number. If the applicant has neither, the last four digits of the applicant's social security number;
3. The applicant's date of birth;
4. The applicant's gender;
5. The applicant's full name;
6. The applicant's residence address;
7. The applicant's mailing address, if different from the residence address;
8. The date of the transaction;
9. The applicant's party affiliation, if any;
10. The applicant's telephone number;
11. An identifier of the agency receiving the application;
12. The jurisdiction in which the applicant was previously registered to vote;
13. The name under which the applicant was previously registered to vote;
14. Audit information sufficient to allow the agency to identify the transaction and retrieve and reproduce the application, including the applicant's signature.

**821—8.3(48A) File specifications.** Technical requirements, including the record format, and the method of file transfer, shall be decided upon and agreed to by the registrar and the agency submitting electronic voter registration data.

**821—8.4(48A) Technical requirements for electronic signatures.** Agencies which accept and collect paperless voter registration transactions shall maintain an electronic "copy" of the document, including the applicant's signature. The design of the system shall be such that no change to the document can be made and the document can be reproduced in hard copy when necessary.

**821—8.5(48A) Transmission of paper voter registration forms.** Voter registration applications or changes accepted on paper documents by agencies shall be sent to the appropriate county commissioner by courier, U.S. mail, or other reliable carrier not later than the Friday of the week in which the document is received by the agency. If an agency receives completed voter registration forms on the Saturday which is a close of registration date for an election, the agency shall forward those registration forms immediately following the end of that business day. Nothing in these rules shall be construed to require an agency to be open for business on the last day of registration for an election.

These rules are intended to implement Iowa Code sections 48A.11 and 48A.21.

[Filed 11/4/94, Notice 9/28/94—published 11/23/94, effective 1/5/95]

[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/10/04]

[Filed Emergency After Notice ARC 2376C (Notice ARC 2160C, IAB 9/30/15; Amended Notice ARC 2246C, IAB 11/25/15), IAB 2/3/16, effective 1/5/16]



CHAPTER 11  
REGISTRATION PROCEDURE AT THE OFFICE OF DRIVER SERVICES,  
DEPARTMENT OF TRANSPORTATION

**821—11.1(48A) Registration status may be checked.** The state registrar, in cooperation with officials of the department of transportation (DOT), shall develop a mechanism by which the registration status of an individual seeking a driver license or nonoperator identification card from the office of driver services, DOT, can be checked by computer while other business is being transacted.

**821—11.2(48A) Driver services client to be afforded opportunity to apply to register to vote or make changes to existing registration.** Every client, aged 17 years 6 months or older, of the office of driver services, DOT, shall be advised by the driver license clerk of the availability of voter registration services in substantially the following manner: “Would you like to apply to register to vote, or update your registration? It can be done quickly and easily at the same time as you get your (license — ID — other, as appropriate).”

1. If the client’s reply to the driver license clerk’s rule 821—11.2(48A) question is negative, the driver license clerk shall not pursue the matter of voter registration.

2. If the client’s reply to the driver license clerk’s rule 821—11.2(48A) question is affirmative, or the client expresses uncertainty of the client’s current registration status, the driver license clerk shall invoke the computer operation required in rule 821—11.1(48A).

**821—11.3(48A) Unregistered client who wants to register.** If the computer search invoked pursuant to 11.2“2” reveals the client is not a registered voter, and the client has expressed a desire to register, the driver license clerk shall determine the name of the client’s county, telephone number, party affiliation, and previous registration information by asking questions in substantially the following form: “In what county do you live?” “What is your telephone number?” “Would you like to declare an affiliation of Democratic, Republican, Green, Libertarian or None?” “Where were you previously registered, if ever?” The driver license clerk shall make computer entries reflecting the client’s replies.

[ARC 7883B, IAB 7/1/09, effective 7/1/09]

**821—11.4(48A) Unregistered clients uncertain of status.** If the computer search invoked pursuant to 11.2“2” reveals the client is not a registered voter, and the client has expressed uncertainty of the client’s registration status, the driver license clerk shall tell the client the result of the computer search and determine if the client wishes to proceed with registration in substantially the following words: “According to the computer, you are not currently registered to vote in Iowa. Would you like to apply to register now?” If the reply to the inquiry is negative, the driver license clerk shall not pursue the matter of voter registration. If the reply is affirmative, the driver license clerk shall proceed as specified in rule 11.2(48A).

**821—11.5(48A) Registered clients.** If the computer search invoked pursuant to 11.2“2” reveals the client is a registered voter, the driver license clerk shall review the record. If the name and address in the voter record are the same as the name and address in the driver record, the driver license clerk shall determine if changes are necessary in substantially the following manner: “According to the computer records, (name of client) is registered to vote in (name of county) county at (address, including city) and the telephone number is (telephone number, or “blank”). Are there any changes or corrections to this information?” The driver license clerk shall make appropriate computer entries based on the client’s reply. If the name and address in the voter record are not the same as the name and address in the driver license record, the driver license clerk shall determine the changes necessary in substantially the following manner: “According to the computer records, (name of client) is registered to vote in (name of county) county at (address, including city) and the telephone number is (telephone number or “blank”). I will change the (“name”), (“address”) or (“name and address”) as appropriate to that on the driver record. Is there a change to your county or telephone number?” The driver license clerk shall make appropriate computer entries based on the client’s reply.

**821—11.6(48A) Signature on attestation required.** The signature required for voter registration shall be obtained in the following manner:

**11.6(1)** In-person applicants. At the conclusion of the applicant's business, applicants who apply to register, or give information to update an existing registration shall be asked to sign the registration application attestation, either on a paper copy or an electronic version. Any applicant who fails to sign the attestation shall be deemed to have declined to apply to register to vote.

**11.6(2)** Online driver's license and nonoperator identification card renewal applicants. During the online renewal transaction, applicants shall be asked if they would like to register to vote or update an existing voter registration record. If an applicant answers the question in the affirmative, the applicant shall have the opportunity to select a political party and affirm the use of the applicant's last digitized signature on file with the office of driver services, department of transportation, to finalize the voter registration transaction.

**11.6(3)** Stand-alone online voter registration applicants. The office of driver services, department of transportation, may offer stand-alone online voter registration through its Web site to individuals with current state-issued driver's licenses or nonoperator identification cards. Applicants for voter registration must provide information from their state-issued identification cards to begin the online voter registration application, including the applicant's first and last name and date of birth as they appear on the state-issued identification card, the last five digits of the applicant's social security number, the state-issued identification card number and the first five digits of the document discriminator number which is printed on the state-issued identification card. Applicants who do not have a state-issued identification card who attempt to use the stand-alone online voter registration function shall be offered the opportunity to print, complete, sign and mail a paper copy of the Iowa voter registration application.

**11.6(4)** A notice shall appear on screen if a stand-alone online voter registration applicant transaction is terminated because of incomplete information. The notice shall instruct the applicant that the applicant may provide the required information by completing a paper voter registration form and mailing it to the commissioner's office or by completing a new application in person at the commissioner's office. Applicants shall also be advised of election day and in-person registration procedures under Iowa Code section 48A.7A.

**11.6(5)** If a stand-alone online voter registration applicant fails to make a party selection and the application is for a new registration, the commissioner shall enter the selection as "no party." If a stand-alone online voter registration applicant fails to make a party selection and the applicant is already a registered voter in the county, the previous party choice of the registrant shall be retained.

[ARC 2376C, IAB 2/3/16, effective 1/5/16]

**821—11.7(48A) Electronic voter registration transactions.** Registration transactions shall be transmitted electronically to the registrar in accordance with 821—Chapter 8. Every transaction shall include the applicant's Iowa driver's license number or Iowa department of transportation-issued nonoperator's identification card number.

These rules are intended to implement Iowa Code section 48A.18.

[Filed 11/4/94, Notice 9/28/94—published 11/23/94, effective 1/5/95]

[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/10/04]

[Filed Emergency ARC 7883B, IAB 7/1/09, effective 7/1/09]

[Filed Emergency After Notice ARC 2376C (Notice ARC 2160C, IAB 9/30/15; Amended Notice ARC 2246C, IAB 11/25/15), IAB 2/3/16, effective 1/5/16]