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

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

INSTRUCTIONS

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IOWA ADMINISTRATIVE CODE

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[Created by 2003 Iowa Acts, House File 534, section 2]

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CHAPTER 40
OFFSET OF DEBTS OWED STATE AGENCIES

11—40.1(8A) Definitions. For the purposes of this chapter, the following definitions shall govern:

“*Claim*” means a liquidated sum due, owing, and payable to a debtor from a public agency.

“*Collection entity*” means the department of administrative services and any other public agency that maintains a separate accounting system, elects to establish a debt collection setoff procedure for collection of debts owed to the public agency, and participates in the department of administrative services’ offset program.

“*Debtor*” means any person owing a debt to a public agency.

“*Department*” means the Iowa department of administrative services.

“*Director*” means the director of the Iowa department of administrative services or the director’s designee.

“*Judicial branch*” means the same as that set forth in Iowa Code section 602.1102.

“*Liability*” or “*debt*” means a “qualifying debt” as defined in Iowa Code section 8A.504(1) “c” or any liquidated sum due, owing, and payable by a debtor to a public agency. Such liquidated sum may be accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

“*Liability owed to a court*” or “*debt owed to a court*” means any liquidated sum due, owing, and payable to any clerk of the Iowa district court including, but not limited to, “court debt” as defined in Iowa Code section 602.8107(1) which remains unpaid 30 or more days after the date the court debt was due.

“*Liquidated*” means that the amount of the claim or debt is definite, determined, and fixed by agreement of the parties, by operation of law, or through court or administrative proceedings.

“*Offset*” means to set off liabilities owed by persons to public agencies against claims owed to persons by public agencies.

“*Offset program*” means the department program for debt collection under the provisions of Iowa Code section 8A.504 through the daily processing and income tax refund programs.

“*Person*” or “*entity*” means an individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

“*Public agency*” or “*agency*” means a board, commission, department, including the department of administrative services, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa Annual Comprehensive Financial Report, or a political subdivision of the state, or an office or unit of a political subdivision, or a clerk of district court. However, “public agency” or “agency” does not mean any of the following:

1. The office of the governor;
2. The general assembly, or any office or unit under its administrative authority; or
3. The judicial branch, as provided in Iowa Code section 602.1102 other than the clerk of the district court. Offset procedures uniquely applicable to debts owed to clerks of the district court are set forth in rules 11—40.10(8A) to 11—40.15(8A).

[ARC 1842C, IAB 1/21/15, effective 2/25/15; ARC 6865C, IAB 2/8/23, effective 3/15/23]

11—40.2(8A) Scope and purpose.

40.2(1) Purpose. The purpose of these rules is to establish a procedure by which public agencies can participate in the department’s offset program by identifying debtors who owe liabilities to those public agencies and to establish a procedure for offsetting those liabilities against claims owed to debtors by public agencies.

40.2(2) Collection. Agencies may collect debts under the provisions of Iowa Code section 8A.504 through the daily processing and income tax refund offset programs.

40.2(3) Inclusions in and exclusions from setoff. The offset system may be used to collect any debt described in Iowa Code section 8A.504 as long as the conditions of rule 11—40.3(8A) are satisfied. However, some claims against public agencies on behalf of certain debtors are made from funds exempt

from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department's state accounting enterprise.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.3(8A) Participation guidelines.

40.3(1) *Participation—cost effective.* Those public agencies qualified under rule 11—40.2(8A) to use this chapter's offset provisions should utilize these provisions when it is cost-effective to do so. Final determination regarding whether or not it will be cost-effective to offset any debt owed will be at the discretion of the director. Generally, it will not be cost-effective to offset a debt if the total anticipated collection cost will exceed the amount of the claim. The cost-effectiveness criteria that the director applies will not be the same for every agency. Circumstances differ among agencies. The following nonexclusive examples are intended to provide guidance in determining cost-effectiveness. These examples represent instances in which it might not be cost-effective to offset debts.

EXAMPLE A: A debtor has ceased operations for an extended period of time.

EXAMPLE B: A business has changed its organizational structure (e.g., from a sole proprietorship to a partnership or corporation).

EXAMPLE C: A debt has been placed with a private collection firm and it appears likely that the firm will collect the debt.

EXAMPLE D: The age or health of a debtor is such that it is unlikely that the debtor will be receiving any payments from a public agency.

EXAMPLE E: The debtor is a foreign student who has left the country.

EXAMPLE F: The debtor is in bankruptcy.

EXAMPLE G: Pursuant to statute or federal regulations, certain agencies cannot write off debts. If the debt of one of these agencies has been owed for a substantial amount of time, it may be reasonable to assume that referral would not be cost-effective (e.g., the debtor has changed its name or address or for some other reason would be impossible to locate).

40.3(2) *Minimal debt amounts accepted.* Before a debt may be placed in the offset program, the amount of a debtor's original liability must be at least \$50, except when the source of the claim is a tax refund or tax rebate, in which case the debt may be, at a minimum, \$25.

40.3(3) *Debts legally enforceable.* Public agencies may only place debts in the offset program if the debts are legally enforceable and all of the following conditions are satisfied:

a. The debt shall have been established (liquidated) by one of the following means:

(1) Mutual written agreement between the debtor and the public agency;

(2) Alternative procedures authorized by applicable state or federal law with respect to a "qualifying debt" as defined in Iowa Code section 8A.504(1); or

(3) Court proceeding or administrative process which included notice to the debtor and an opportunity for the debtor to contest the amount of the debt through a contested case procedure under Iowa Code chapter 17A or a substantially equivalent process.

b. The debt shall have been reduced to a final judgment or final agency determination that is no longer subject to appeal, certiorari, or judicial review or shall have been affirmed through appeal, certiorari, or judicial review.

c. The debt shall be in an amount certain that is past due and not subject to any legal prohibition to collection.

40.3(4) *Debtor's opportunity to challenge placement of debt in offset program.* Unless otherwise provided by applicable state or federal law for a "qualifying debt" as defined in Iowa Code section 8A.504(1) "c," debts shall not be placed in the offset program until after the public agency has:

a. Made a good-faith effort to collect the debt through other means;

b. Provided the debtor advance notice that the debt will be placed in the offset program if not paid when due; and

c. Provided a formal or informal opportunity for the debtor to challenge placement of the debt in the offset program. Such opportunity may be separate from or combined with the debtor's opportunity to contest the amount of the debt. The public agency has the burden to determine whether due process will

be satisfied under the circumstances by the form of the opportunity provided for the debtor to challenge placement of the debt in the offset program.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.4(8A) Duties of the agency. Public agencies that seek to place debts in the offset program shall have the following duties regarding the department and debtors.

40.4(1) Notification to the department.

a. A public agency seeking to place debts in the offset program must provide a list of debtors to the department. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the debtors owing debts to the public agency.

b. The director shall not process a claim under the provisions of Iowa Code section 8A.504 until notification is received from the public agency that the debt satisfies the requirements of rule 11—40.3(8A) or, in the case of a debt owed to a district court clerk, is a “court debt” as defined in Iowa Code section 602.8107(1) which has been due for 30 or more days. The agency shall provide, along with each liability file, a written statement to the director declaring that the provisions of this paragraph are satisfied.

40.4(2) Notification of change in status of debt. Each public agency that has chosen to submit a debt for participation in the offset program must notify the department immediately of any change in the status of the public agency’s individual debts submitted under the offset program. This notification shall be made no later than 30 calendar days from the occurrence of the change. A change in status may come from payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

40.4(3) Semiannual certification of file. Each public agency that has provided a liability file to the department shall be required to recertify the file to the department semiannually. This recertification shall be made in a manner prescribed by the director. Debtors not recertified in the manner prescribed will be removed from the liability file.

40.4(4) Notification to debtor. Each public agency shall send notification to the debtor within 10 calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

- a.* The public agency’s right to the payment in question.
- b.* The public agency’s right to recover the payment through the offset procedure.
- c.* The basis of the public agency’s case in regard to the debt.
- d.* The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.
- e.* The debtor’s right to appeal the offset and the required appeal procedure.
- f.* The name of the public agency to which the debt is owed, with a telephone number for the debtor to contact the public agency regarding questions about the offset.

The department may require that a copy of this notice be sent to the department, but an agency is not required to routinely send such notices to the department.

40.4(5) Payment of residual funds to debtor. It is the responsibility of the public agency to reimburse the debtor for the difference between the amount of liability payable and the amount of the claim payable to the debtor.

40.4(6) Appeal. Debtors shall have the right to appeal the application of an offset upon notice of the potential offset. An agency subject to Iowa Code chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with Iowa Code chapter 17A. Other public agencies shall give notice, conduct hearings, and allow appeals in a manner substantially equivalent to that provided under Iowa Code chapter 17A.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.5(8A) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request by a public agency on an individual debtor basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match the payment against a debt listing provided by the public agencies participating in the offset program. The department will notify the public agency of the debtor's or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days while awaiting notification from the agency as to the amount required to satisfy the debtor's or entity's debt to the state. If notification is not made to the department by the public agency within 45 days, the amount of the payment shall be released to the debtor or entity.

The department will make the offset only after the public agency has notified the debtor or entity as prescribed in subrule 40.4(4). The department shall then refund any balance amount due from the public agency to the debtor or entity.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.6(8A) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code section 8A.504, after satisfaction of the provisions of Iowa Code section 422.73, priority shall be given to claims in the following order:

1. Claims filed by the child support recovery unit or the foster care recovery unit;
2. Claims filed by a clerk of the district court;
3. Claims filed by the college student aid commission;
4. Claims filed by the investigation division of the department of inspections and appeals; and
5. All other claims filed by public agencies under Iowa Code section 8A.504.

The order of priority for offset against multiple claims by more than one public agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by public agencies shall be offset in order of the date the listing was made with the department.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.7(8A) Payments of offset amounts. Payments to the public agency requesting participation in the offset program shall be made by the department by the last day of the month in which the request is made.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.8(8A) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the public agency requesting placement of the debt into the offset program. These costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by higher state or federal law, the director shall allow reimbursement in a manner which conforms to the higher law. Prior to placing a debt in the offset program, the public agency will enter into a memorandum of understanding with the department of administrative services which will outline the costs, responsibilities of the parties, and methods for remuneration of the offset funds.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.9(8A) Confidentiality of information. Information shared between the department and the public agencies wishing to participate in the offset program shall be deemed confidential pursuant to Iowa Code section 8A.504(2)“b” and shall be disclosed only to the extent necessary to sufficiently identify the debtor(s) liable to the public agency. Identifying information shall be used only for the purpose of participation in the offset program.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

OFFSET OF DEBTS OWED TO CLERKS OF THE DISTRICT COURT

11—40.10(8A) Incorporation by reference. The department incorporates by reference rules 11—40.1(8A) to 11—40.9(8A). “Debtor,” for purposes of rules 11—40.10(8A) to 11—40.15(8A), shall pertain only to a debtor who owes a debt to a clerk of district court.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.11(8A) Applicability and procedure. For liabilities accrued and owing to any and all clerks of the Iowa district court, the department shall issue a written notice informing any debtor having a valid claim against a public agency that an offset will be applied to the debt. The department will apply the offsets for district clerks as provided in Iowa Code section 8A.504, and the department will send a written notice to the debtor. Subsequently, the department will also provide administrative procedures and available remedies for contesting the validity of such an offset. The Iowa district court will provide the procedures and remedies for challenging the underlying liability at issue. This rule applies only to liabilities and debts owed to the clerks of the Iowa district court.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.12(8A) Notice of offset. The department shall send written notification of the offset to the debtor within 10 calendar days from the date the department is notified of such debt by the judicial branch. This notification must include:

1. The clerk of court claiming the liability;
2. The clerk of court’s right to the payment in question;
3. The clerk of court’s right to recover the payment through the offset program;
4. The basis of the clerk of court’s case in regard to the debt;
5. The right of the debtor to request, within 15 days of the mailing of the notice, that the payment between parties be split when the payment in question is jointly owned or otherwise owned by two or more debtors;
6. The right of the debtor to contest the right of offset and the validity of such offset with the department by mailing, to the department’s legal counsel, a protest within 15 days of the mailing of such notice, and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in 11—Chapter 7;
7. The telephone number of the representative the debtor may contact concerning questions regarding the validity of the offset and the procedures for the offset;
8. That the debtor has the opportunity to contest the validity and amount of the liability by mailing, within 15 days of mailing of the notice of offset, a written application to contest the liability to the appropriate clerk of the Iowa district court; and
9. The name of the clerk of the district court and the telephone number for the debtor to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.13(8A) Procedure for contesting. The debtor may contest the validity or amount of the underlying liability by mailing written notification of the debtor’s intent to contest such a liability to the appropriate clerk of the Iowa district court. The Iowa district court will provide the debtor with the procedure and remedies for contesting the validity and amount of the underlying liability.

The debtor may contest the validity of the offset or the right of the offset by mailing written notification to:

Department of Administrative Services
General Counsel
Hoover State Office Building
Third Floor
Des Moines, Iowa 50319

The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in 11—Chapter 7.

If a debtor gives written notice of intent to contest the offset validity or the right of offset, the clerk of the district court and the department will hold a payment in abeyance until the final disposition of the contested liability or offset is determined.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.14(8A) Postoffset notification and procedure. Following the offset, the department will notify the debtor that the offset was performed. It is the responsibility of the department to make payment to the debtor liable to the Iowa district court clerk of any amount to which the Iowa district court clerk is not entitled to receive under the offset, in accordance with established procedures.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.15(8A) Report of satisfaction of obligations. At least monthly, the department will file with the judicial branch a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of an offset obligation. No additional or separate written notice from the department regarding the performed offsets is required.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

These rules are intended to implement Iowa Code sections 8A.504, 422.16, 422.20, 422.72, and 422.73.

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[Filed ARC 6865C (Notice ARC 6752C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 63

LEAVE

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1/7/04, see 581—Ch 14]

11—63.1(8A) Attendance. Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

11—63.2(8A) Vacation leave.

63.2(1) Nontemporary employees shall earn vacation for continuous state employment as follows:

- a. Two unscheduled holidays to be added to the vacation accrual each year.
- b. Two weeks of vacation during the first and through the fourth year of employment.
- c. Three weeks of vacation during the fifth and through the eleventh year of employment.
- d. Four weeks of vacation during the twelfth year and through the nineteenth year of employment.
- e. Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.
- f. Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

63.2(2) Vacation is subject to the following conditions:

a. Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.

b. Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.

c. Vacation shall not accrue during any absence without pay.

d. An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.

e. Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.

f. An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.

g. Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.

h. In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician or physician assistant shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician or physician assistant of the illness or disability and its duration.

i. Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.

j. Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

k. One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

l. Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

m. Reserved.

n. Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

o. If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules.

[ARC 3215C, IAB 7/19/17, effective 7/1/17; ARC 6866C, IAB 2/8/23, effective 3/15/23]

11—63.3(8A) Sick leave with pay. Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

63.3(1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

63.3(2) Sick leave shall not be used as vacation.

63.3(3) Sick leave shall not be granted in excess of the amount accrued.

63.3(4) There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

63.3(5) In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

63.3(6) Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

63.3(7) Sick leave shall not accrue during any absence without pay.

63.3(8) Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

63.3(9) An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

63.3(10) All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee is separated due to an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 and the provisions of 11—64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

63.3(11) Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

- a. When a death occurs in the immediate family;
- b. For the temporary care of, or necessary attention to, members of the immediate family.

For purposes of this subrule, "immediate family" means the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse and other persons who are members of the employee's household.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave. Employees shall, upon request, be paid accrued compensatory leave in a lump sum. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4).

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin shall be eligible for family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous 12 months. Leave may be for one or more of the following reasons:

- a. The birth or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;

b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

e. A qualifying exigency, as defined in federal FMLA regulations, arising out of the fact that the employee's spouse, son, daughter or parent is a covered servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, in a foreign country.

f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the FMLA regulations.

63.4(2) Leave may be taken on an intermittent basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

63.4(3) Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

When FMLA leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted.

63.4(4) An employee shall submit a written request, using forms prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice as soon as practicable after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline of the employee.

The appointing authority shall provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms prescribed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within five workdays.

63.4(5) The appointing authority may, at the agency's expense, require a second opinion. The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The

appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

63.4(8) The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that if a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

63.4(9) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act.

63.4(11) An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

63.4(12) FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

63.4(13) FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased;

however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

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11—63.5(8A) Leave without pay. A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

63.5(1) Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

63.5(2) Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

63.5(3) Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave for at least an eight-week period when the purpose is to provide recovery from a medically related disability. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

- a. The employee fails or refuses to supply the requested verification of continued disability.
- b. The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.
- c. The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

63.5(5) If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, disaster service volunteer leave or educational leave must notify the appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. An employee on leave without pay, disaster service volunteer leave, or educational leave may request permission from the appointing authority to return to work sooner than the original

approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

63.6(3) At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—63.7(8A) Compensatory leave. Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

11—63.8(8A) Holiday leave. Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

63.8(1) The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

63.8(2) For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

63.8(3) To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

63.8(4) When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

63.8(5) When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

11—63.9(8A) Military leave. For purposes of subrules 63.9(1) and 63.9(3) and as applied to nontemporary employees whose regularly scheduled work shift is 16 hours or less, “30 days” means 30 work days. For nontemporary employees whose regularly scheduled work shift is more than 16 hours, “30 days” in subrules 63.9(1) and 63.9(3) shall be defined in accordance with the provisions of Iowa Code section 29A.28.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee’s scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee’s work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

63.9(3) Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) At the conclusion of military service, the employee must notify the employee’s appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

63.9(5) An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa’s benefits program policies and procedures. Upon return to employment, the employee’s accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

63.9(6) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee’s share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person’s period of service in the uniformed services.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 3115C, IAB 6/7/17, effective 5/17/17; ARC 3231C, IAB 8/2/17, effective 9/6/17]

11—63.10(8A) Educational leave. Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

63.10(1) *Length of leave.* Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

63.10(2) *Selection of applicants.* While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

63.10(3) *Educational institutions.* An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

63.10(4) *Agency report.* Rescinded IAB 5/27/15, effective 7/1/15.
[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 2000C, IAB 5/27/15, effective 7/1/15]

11—63.11(8A) *Election leave.* An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

11—63.12(8A) *Court appearances and jury duty.* When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

63.12(1) Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

63.12(2) The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

63.12(3) An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

63.12(4) Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

11—63.13(8A) *Voting leave.* An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

11—63.14(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

11—63.15(8A) Absences due to emergency conditions. When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

11—63.16(8A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

11—63.17(8A) Examination and interviewing leave.

63.17(1) Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(2) Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(3) Appointing authorities shall post and make known to employees the provisions of this rule.

11—63.18(8A) Service on committees, boards, and commissions. State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members. Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as "donated leave" and shall be subject to the rules, policies and procedures of the department.

63.19(1) Definitions:

"Catastrophic illness" means a physical or mental illness or injury of the employee, as certified by a licensed physician or physician assistant, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

"Donated leave" means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

"Employee" means a full-time or part-time executive branch employee who is eligible to accrue vacation.

"Immediate family member" means the employee's spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

63.19(2) Program eligibility for employee illness. In order to receive donated leave for a catastrophic illness, an employee must:

- a. Have a catastrophic illness as defined by subrule 63.19(1); and
- b. Have exhausted all paid leave; and
- c. Not be supplementing workers' compensation to the extent that it exceeds more than 100 percent of the employee's pay for the employee's regularly scheduled work hours on a pay-period-by-pay-period basis; and
- d. Not be receiving long-term disability benefits; and
- e. Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and
- f. Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

63.19(3) Program eligibility for immediate family member illness. In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

- a. Have exhausted all paid leave for which eligible; and
- b. Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and
- c. Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

63.19(4) Certification requirements. The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department's expense, seek second medical opinions or updates from physicians or physician assistants regarding the status of an employee's or employee's immediate family member's illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician or physician assistant who is not regularly employed by the state.

63.19(5) Program requirements.

a. Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient's accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee's regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

b. Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

c. Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor's vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

d. Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

e. Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

f. Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

g. Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

h. Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

i. If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

[ARC 6866C, IAB 2/8/23, effective 3/15/23]

11—63.20(8A,70A) Blood, bone marrow, and living organ donation leave. Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. To ensure adequate staffing, an appointing authority may require employees to request leave, in advance, to serve as a voluntary blood donor pursuant to Iowa Code section 70A.39(2) "c." An employee who requests leave to serve as a voluntary blood donor pursuant to Iowa Code section 70A.39(2) "c" may be denied such leave by the appointing authority if granting the leave would unreasonably impact the operational efficiency of the agency. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act, Iowa Code chapter 669.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 6090C, IAB 12/15/21, effective 1/19/22]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapter 70A.

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¹ Effective date of subrule 14.2(12) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83.

CHAPTER 103
STATE DRIVER GUIDELINES FOR STATE VEHICLE USE AND FUELING

[Prior to 9/17/03, see 401—Chapter 11]

11—103.1(8A) Purpose. The purpose of this chapter is to provide state driver guidelines for motor vehicle use, fleet assignments, maintenance, and fueling. The chapter also provides for the administration of a self-insurance program for motor vehicles owned by the state.

[ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.2(8A) Definitions.

“At-fault accident” means an accident in which the state driver is determined to be 50 percent or more responsible for the accident.

“Biodiesel blended fuel” means the same as defined in Iowa Code section 214A.1.

“Biofuel” means the same as defined in Iowa Code section 214A.1.

“Cargo payload” means the net cargo weight transported. The weight of the driver, passengers, and fuel shall not be considered in determining cargo payload.

“Cargo volume” means the space calculated in cubic feet behind the vehicle driver and passenger seating area. In station wagons, the cargo volume is measured to the front seating area with the second seat laid flat behind the driver.

“Defensive driving course” means course instruction provided by the Iowa state patrol or other courses of instruction provided in person or online as approved by the director of the department.

“Department” means the department of administrative services (DAS).

“Determination period” means any 12-month period beginning January 1 and ending December 31.

“Driver improvement course” means course instruction provided by an Iowa community college.

“Ethanol blended gasoline” means the same as defined in Iowa Code section 214A.1.

“Gross vehicle weight rating (GVWR)” means the weight specified by the manufacturer as the loaded weight of a single vehicle.

“Habitual violator” means a state driver who has been convicted of three or more moving violations committed within a 12-month period.

“Passengers” means the total number of vehicle occupants transported on a trip, including the driver.

“Pool car” means a vehicle assigned to the department of administrative services, fleet services.

“Preventable accident,” for purposes of this chapter, means an accident that could have been prevented or in which damage could have been minimized by proper evasive action.

“Primary use” means the utilized application exceeds 50 percent of the miles driven annually for United States Environmental Protection Agency (EPA)-designated light-duty trucks and vans and exceeds 75 percent of the miles driven annually for EPA-designated passenger sedans and wagons.

“Private vehicle” means any vehicle not registered to the state of Iowa.

“Qualified renewable fuel” means ethanol blended gasoline or biodiesel blended fuel that meets the standards and classifications for that type of motor fuel as provided in Iowa Code section 214A.2.

“Special work vehicle” means but is not limited to fire trucks, ambulances, motor homes, buses, medium- and heavy-duty trucks (26,000 lbs GVWR and larger), heavy construction equipment, and other highway maintenance vehicles, and any other classes of vehicles of limited application approved by the state vehicle dispatcher.

“State driver” means any person who drives a vehicle to conduct official state business other than a law enforcement officer employed by the department of public safety.

“State vehicle” means any vehicle registered to the state of Iowa, department of administrative services.

[ARC 4053C, IAB 10/10/18, effective 11/14/18; ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.3(8A) Applicability.

103.3(1) *Agencies subject to vehicle assignment guidelines.* Pursuant to Iowa Code section 8A.362, the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the guidelines set forth in rule 11—103.4(8A).

- a. The department, including all agencies required to obtain vehicles through the department;
- b. State department of transportation;
- c. Institutions under the control of the state board of regents;
- d. The department for the blind; and
- e. Any other state agency exempted from obtaining vehicles for use through fleet services.

103.3(2) *Exceptions to vehicle assignment guidelines.* This rule shall not apply to special work vehicles, law enforcement vehicles and vehicles propelled by alternate fuels.

103.3(3) *Exceptions to driving guidelines for the vehicle self-insurance program.* The driving guidelines for the vehicle self-insurance program do not apply to the department of transportation or to institutions under the authority of the board of regents. Nor do they supersede any applicable federal law or regulation or state law. Persons who have been granted an ADA exception through the department of administrative services are also exempted from these guidelines.

[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.4(8A) Vehicle assignment guidelines.

103.4(1) In order to maximize the average passenger miles per gallon of motor vehicle fuel consumed, vehicles shall be assigned on the following basis:

- a. EPA-rated compact sedans may carry one or two passengers and their personal effects.
- b. EPA-rated midsize sedans or small sport utility vehicles shall carry three or more passengers and their personal effects.
- c. EPA-rated full-size sedans or midsize sport utility vehicles shall carry four or more passengers and their personal effects.
- d. Cargo vans shall be appropriate in size and GVWR for their primary use with regard to payload and cargo volume.
- e. Mini passenger vans shall carry three or more passengers, their personal effects, and cargo that does not conform to the use of a full-size sedan.
- f. Eight-passenger vans shall carry five or more passengers and their personal effects.
- g. Twelve-passenger vans shall carry seven or more passengers and their personal effects.
- h. Fifteen-passenger vans shall carry nine or more passengers and their personal effects.
- i. Pickups and sport utility vehicles shall be appropriate in size, GVWR, and drivetrain (two-wheel drive or four-wheel drive) for their primary use with regard to trailering, payload, cargo volume, and on/off road requirements.

103.4(2) Vehicles that are made available for temporary assignment, such as departmental pool vehicles, shall be assigned in accordance with this rule. If an appropriately classified vehicle is unavailable, a larger available classification may be substituted. Other substitutions may be authorized in consideration of passenger physical characteristics or disabilities or any other distinguishing circumstances and conditions as determined by the fleet services manager, the director of the department of transportation, or the executive director of the board of regents for the vehicles under their respective authorities.

103.4(3) Vehicles permanently issued to agencies or drivers shall be assigned in accordance with this rule based on the primary use of the vehicle.

103.4(4) The director may delegate authority to officials of the state, and agency heads, for the use of private vehicles on state business.

103.4(5) If a state vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not usable.

[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.5(8A) Type of accident. The determination as to whether an accident is without fault, at fault, or preventable shall be made by the department's fleet services manager. In making this determination,

the fleet services manager will consider all relevant information including information provided by the state driver and others involved in the accident, information provided by witnesses to the accident and information contained in any investigating officer's reports.

[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.6(8A) Valid driver's license required. A state driver shall not drive a state or private vehicle on state business if the state driver does not currently possess a valid driver's license with the appropriate classifications, restrictions and endorsements.

11—103.7(8A) Required reporting. A state driver must report any potential liability, collision or comprehensive loss which occurs while conducting state business to the department's fleet services manager. The failure to report may result in payment of any loss from the funds of the state driver's employing agency rather than from the state self-insurance fund. All documentation, such as proof of required class completion and insurance coverage, must be provided to the department's fleet services manager.

[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.8(8A) Mandatory training. Each state driver who is assigned a state vehicle or who drives a state or private vehicle on state business at least 5,000 miles per year shall attend a defensive driving or driver improvement course every three years. Each state driver who drives a pool car shall also participate in vehicle safety classes as required by the department and provided by the Iowa state patrol or Iowa community colleges.

[ARC 4134C, IAB 11/21/18, effective 12/26/18]

11—103.9(8A) Required adherence to motor vehicle laws. Each state driver is required to abide by all applicable motor vehicle laws of the state of Iowa or any other state in which the state driver may be traveling with the exception of drivers covered by Iowa Code section 321.231.

11—103.10(8A) Responsibility for payment of traffic violations. Each state driver is required to pay all fines arising from any violation of motor vehicle laws of the state of Iowa or any other state in which the state driver may be traveling.

11—103.11(8A) Access to driving records. The department has the authority to monitor the driving records of state drivers who drive a state vehicle or a private vehicle to conduct state business.

[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.12(8A) Corrective actions.

103.12(1) If a state driver is involved in any one of the following occurrences, the state driver will receive written counseling concerning the state driver's responsibilities and will be required to attend the next available defensive driving course. The defensive driving course must be attended after one of the following occurrences:

a. The state driver is involved in one at-fault or preventable accident while operating a state vehicle.

b. The state driver receives three moving traffic violations in a three-year period while operating a state vehicle or a private vehicle.

103.12(2) If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period not to exceed one year and will be required to attend and successfully complete at the state driver's expense the next available driver improvement course after one of the following occurrences. While the state driver is suspended from driving a state vehicle, the state driver may be allowed to receive mileage reimbursement from the state of Iowa for driving a private vehicle for state business. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation, and proof of completion of the driver improvement course.

- a. The state driver is involved in three at-fault or preventable accidents in a five-year period while operating a state vehicle.
- b. The state driver is involved in five moving traffic violations within a three-year period while operating a state vehicle or a private vehicle.
- c. The state driver is convicted of a first offense driving while intoxicated charge while operating a private vehicle on private business.
- d. The state driver transports alcoholic beverages in the passenger compartment of a motor vehicle.
- e. The state driver is a habitual violator of traffic laws.

103.12(3) If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period exceeding one year up to a permanent suspension or from driving a private vehicle on state business and will be required to attend and successfully complete, at the person's own expense, a driver improvement course. The driver shall attend the next available driver improvement course after one of the following occurrences. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation, and proof of completion of the driver improvement course.

- a. The state driver is involved in four at-fault or preventable accidents during a five-year period while operating a state vehicle.
- b. The state driver receives six or more moving traffic violations while operating a state or private vehicle within a three-year period.
- c. A state driver is convicted of more than one operating while intoxicated offense within a five-year period while operating a private vehicle on private business.
- d. The state driver fails to notify the department of an operating while intoxicated conviction received while operating a state vehicle or a private vehicle.

103.12(4) If a state driver fails to attend or does not successfully complete the driver improvement course, the state driver will be suspended from driving a state or private vehicle for state business until such time as a driver improvement course has been successfully completed.

103.12(5) If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle or a private vehicle on state business for a period up to one year.

- a. Driving a state vehicle or a private vehicle on state business with a suspended driver's license.
- b. Driving a private vehicle for state business without the minimum insurance required by law.

103.12(6) If convicted of a first offense driving while intoxicated while driving a private vehicle on private business, the state driver is required to provide proof of satisfactory completion of a course for drinking drivers as defined in Iowa Code section 321J.22 and completion of substance abuse evaluation and treatment services in addition to the corrective actions imposed by 103.12(2).

103.12(7) If a state driver is convicted of operating a state vehicle while intoxicated, or operating a private vehicle on state business while intoxicated, the state driver will be permanently suspended from driving a state vehicle or a private vehicle on state business. This suspension may not be reconsidered.
[ARC 4134C, IAB 11/21/18, effective 12/26/18; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.13(8A) Reconsideration of suspension. If a state driver is suspended from driving a state vehicle, the driver may request a reconsideration of the suspension except as noted in 103.12(7). A written request for reconsideration must be submitted to the suspended driver's immediate supervisor. The immediate supervisor must provide a written report, supporting or denying the employee's request, to the director of the department. The director shall act on this request and, within 60 days from receipt of the supervisor's request for reconsideration, notify the state driver's supervisor of the action taken.
[ARC 4134C, IAB 11/21/18, effective 12/26/18]

11—103.14(8A) Probationary drivers. If driving privileges are reinstated following a request for reconsideration, the reinstated state driver will be placed in a probationary state vehicle driving status for a period of three months. If a state driver in probationary status has a preventable or at-fault accident while operating a state or private vehicle on state business or receives a moving traffic violation while

operating a state or private vehicle on state business, the probationary status will be revoked and the state driver's original suspension period will be reinstated. Following revocation of probationary status, the state driver may not request further reconsideration of the suspension. A driver in probationary status is eligible to receive mileage reimbursement from the state.

11—103.15(8A) Temporary restricted license. State drivers may operate a state vehicle or a private vehicle on state business while holding a temporary restricted license issued pursuant to Iowa Code section 321.215 or 321J.20 that allows driving for work. In addition, a state driver operating under a temporary restricted license shall provide proof of financial responsibility which meets the minimum standards required by the state of Iowa, department of transportation, pursuant to Iowa Code section 321A.1.

11—103.16(8A) Vehicle fueling.

103.16(1) Fuel used in state-owned automobiles may be purchased at cost from the various state installations or garages such as but not limited to those of the state department of transportation, state board of regents, department of human services, department of corrections, or state motor pools throughout the state. Fuel may also be purchased at retail locations if a state fueling facility is not readily available. When possible, purchases shall be made using a fuel purchase card issued by the department. The fuel purchase card shall not be used to purchase motor fuel other than the classification of fuel described in subrule 103.16(2).

103.16(2) All drivers of state motor vehicles shall fuel their assigned vehicles operating using an internal combustion engine with the highest possible classification of a qualified renewable fuel if all of the following apply:

- a. The manufacturer of the motor vehicle or the EPA expressly states that the classification of a qualified renewable fuel is compatible with the motor vehicle's normal operation.
- b. That classification of a qualified renewable fuel is commercially available in the region where the motor vehicle is being operated.
- c. No emergency situation exists that requires the immediate use of a motor fuel regardless of whether it has been blended with a biofuel.

103.16(3) A brightly colored, highly visible renewable fuel sticker shall be affixed to a motor vehicle for which a qualified renewable fuel is compatible with the motor vehicle's normal operation. The department shall distribute the stickers to state agencies maintaining a state motor pool. A qualified renewable fuel sticker is not required to be affixed to an unmarked motor vehicle used for purposes of providing law enforcement or security.

103.16(4) As part of the department's competitive bidding procedure for the purchase of a motor vehicle operating using an internal combustion engine powered by diesel fuel, the director of the department shall require a bidder to certify that the motor vehicle's manufacturer expressly states that the engine is capable of being powered by the biodiesel blended fuel classified as B-20 or higher.

[ARC 4053C, IAB 10/10/18, effective 11/14/18; ARC 4182C, IAB 12/19/18, effective 1/23/19; ARC 6864C, IAB 2/8/23, effective 3/15/23]

11—103.17(8A) State fleet qualified renewable fuels compliance report. The department shall prepare a state fleet qualified renewable fuels compliance report that shall consolidate information compiled by the department in accordance with Iowa Code section 8A.369. The department shall submit the report to the governor and general assembly not later than March 1 of each year.

[ARC 6864C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 8A.104 and 8A.360 to 8A.369.

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CHAPTER 110
INVENTORY GUIDELINES FOR STATE OF IOWA
PERSONAL AND REAL PROPERTY
[Prior to 9/17/03, see 401—Chapter 10]

11—110.1(7A) Purpose. The department of administrative services is responsible for establishing inventory guidelines for personal and real property owned by state departments. Beginning July 1, 1998, the accompanying rules are the minimum universal guidelines for personal property. Each state department may implement more restrictive guidelines to enhance accountability for physical assets.

11—110.2(7A) Definitions.

110.2(1) *Personal property.* For purposes of this chapter, personal property is any item or equipment that has an acquisition value of \$5000 or more and has an anticipated useful life of one year or more. Computer software is to be excluded from this definition. If the minimum level for capitalization set by the federal Office of Management and Budget 2 CFR Part 200 is changed, the department of administrative services will determine if the amount should be adjusted for the state of Iowa.

110.2(2) *Accounting in aggregate.* Accounting in aggregate is the process of accounting for certain types of items in a lump sum rather than individually. Items accounted for in aggregate are added for the combined value with one entry to the fixed asset listing. Items that may be accounted for in aggregate are defined as: one item that is made up of two or more component parts and the individual values are less than \$5000, but the combined value can be \$5000 or more.

110.2(3) *Acquisition value—cost.* Cost may include freight, installation expense and administrative expense, if readily known and available. For donated items, historical treasures and similar assets, acquisition value is the price that would be paid to acquire an asset with similar service potential.

110.2(4) *Department.* A department is any state agency or institution as identified in Iowa Code section 7A.30.

[ARC 4134C, IAB 11/21/18, effective 12/26/18]

11—110.3(7A) Accounting for items in aggregate. Personal property may be accounted for in aggregate. If accounting in aggregate as defined in 110.2(2), one item or component of the item shall be tagged with a prenumbered tag and all other items or components marked with an unnumbered tag or other identifiable markings.

Any item that is accounted for in the aggregate whose individual values are less than \$5000 will not be included in the Iowa Annual Comprehensive Financial Report (ACFR), even if the amount in the aggregate exceeds the minimum level for capitalization. If a department chooses to account for items in aggregate, or report items at a level that is more restrictive than \$5000, then the department must recognize that these items will be reconciling items when reporting for the ACFR.

To ensure proper accountability for these items, each department will prepare written policies and procedures for tracking and recording items accounted for in aggregate.

[ARC 6865C, IAB 2/8/23, effective 3/15/23]

11—110.4(7A) Physical inventory. A physical inventory of personal property must be taken and the results reconciled with property records at least once every two years.

11—110.5(7A) Inventory identification. If feasible, all inventoried personal property should be identified as state of Iowa property with a prenumbered decal or the appropriate bar code tag or other identifiable mark.

11—110.6(7A) Inventory listing. Personal property should be accounted for on an inventory listing. As applicable, the following minimum information must be presented on the inventory listing for each record of personal property:

1. Department.
2. Tag number.
3. Description.

4. Acquisition value.
5. Location(s).
6. Acquisition date.
7. Disposition date (not applicable until disposal of property).
8. The only depreciation method allowed shall be the straight-line method.
9. If the personal property is depreciated, the information must include the useful life of the asset.

Departments shall develop adequate internal control procedures that (1) identify individual(s) authorized to update and change the inventory records and (2) provide for an adequate segregation of duties between the recording and custody of property.

[ARC 4134C, IAB 11/21/18, effective 12/26/18]

11—110.7(7A) Capital leases. Property acquired under capital lease provisions shall be accounted for on the inventory listing at the inception of the lease.

These rules are intended to implement Iowa Code section 7A.30.

[Filed 10/21/94, Notice 8/31/94—published 11/9/94, effective 12/14/94]

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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]

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CHAPTER 59
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191—59.1(510B,510C) Purpose. The purpose of this chapter is to administer the provisions of Iowa Code chapters 510, 510B and 510C relating to the regulation of pharmacy benefits managers.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 4578C, IAB 7/31/19, effective 9/4/19; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.2(510B) Definitions. The terms defined in Iowa Code sections 510.11, 510B.1, and 510C.1 shall have the same meaning for the purposes of this chapter. The definitions contained in 191—Chapter 58, “Third-Party Administrators,” and 191—Chapter 78, “Uniform Prescription Drug Information Card,” are incorporated by reference. As used in this chapter:

“*Complaint*” means a written communication from a pharmacy or the commissioner to a pharmacy benefits manager that makes an inquiry or expresses a grievance and includes, but is not limited to, the following:

1. A comment on, contest or appeal by a pharmacy of a pharmacy benefits manager’s maximum allowable cost, maximum allowable cost list or other pricing methodology used to pay a pharmacy.
2. Any pharmacy’s appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5).
3. Any request by a pharmacy for an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) “d.”
4. Any inquiries from the commissioner pursuant to subrule 59.8(3).

“*Day*” means a calendar day, unless otherwise defined or limited.

“*Paid*” means the later of either the day on which the payment is mailed by the pharmacy benefits manager or the day on which the electronic payment is processed by the pharmacy benefits manager’s bank.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.3(510B) Timely payment of pharmacy claims.

59.3(1) All benefits payable under a pharmacy benefits management plan shall be paid as soon as feasible but within 20 days after receipt of a clean claim when the claim is submitted electronically and shall be paid within 30 days after receipt of a clean claim when the claim is submitted in paper format.

59.3(2) A payment to the pharmacy for a clean claim is considered to be overdue and not timely if not paid within 20 or 30 days, whichever is applicable. If a clean claim is not timely paid, the pharmacy benefits manager must pay the pharmacy interest at the rate of 10 percent per annum commencing the day after any claim payment or portion thereof was due until the claim is finally settled or adjudicated in full.

59.3(3) A pharmacy benefits manager may demonstrate the date a claim is paid by a mail record or a bank statement.

59.3(4) Pursuant to Iowa Code section 510B.4 and paragraph 59.4(1)“j,” a pharmacy benefits manager shall not retroactively reduce or increase reimbursement, through adjustment or reconciliation or any other means, of a clean claim paid to pharmacies.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.4(510B) Audits of pharmacies by pharmacy benefits managers.

59.4(1) An audit of pharmacy records by a pharmacy benefits manager shall be conducted in accordance with the following:

- a. The pharmacy benefits manager conducting the initial on-site audit must provide the pharmacy written notice at least ten business days prior to conducting any audit;
- b. Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

c. When a pharmacy benefits manager alleges an error in reimbursement has been made to a pharmacy, the pharmacy benefits manager shall provide the pharmacy sufficient documentation to determine the specific claims included in the alleged error;

d. A pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for prescription drugs or medicinal supplies, written or transmitted by any means of communication, for purposes of validating the pharmacy record with respect to orders or refills of a drug dispensed pursuant to a prescription;

e. Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the pharmacy benefits manager;

f. The period covered by an audit may not exceed two years from the date on which the claim was submitted to or adjudicated by a managed care company, insurance company, third-party payor, or any pharmacy benefits manager that represents such entities;

g. Unless otherwise consented to by the pharmacy, an audit may not be initiated or scheduled during the first seven calendar days of any month due to the high volume of prescriptions filled during that time;

h. The preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A final written audit report shall be received by the pharmacy within six months of the preliminary audit report or final appeal, whichever is later;

i. A pharmacy shall be allowed at least 30 days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit; and

j. If it is determined by the pharmacy benefits manager that an error in reimbursement to a pharmacy occurred, the following criteria apply:

(1) For each contract between the pharmacy benefits manager and the pharmacy existing on or after January 1, 2015, a pharmacy's usual and customary price for compounded medications is considered the reimbursable cost, unless the contract between the pharmacy benefits manager and the pharmacy specifically provides details for a pricing methodology for compounded medications.

(2) A finding of error in reimbursement must be based on the actual error in reimbursement and not be based on a projection of the number of patients served having a similar diagnosis or on a projection of the number of similar orders or refills for similar prescription drugs.

(3) Calculations of errors in reimbursement must not include dispensing fees unless prescriptions were not actually dispensed, the prescriber denied authorizations, the prescriptions dispensed were medication errors by the pharmacy, or the amounts of the dispensing fees were incorrect.

(4) Any clerical or record-keeping error of the pharmacy, including but not limited to a typographical error, scrivener's error, or computer error, regarding a required document or record shall not be considered fraud by the pharmacy under paragraph 59.6(3) "a" or under a pharmacy's contract with the pharmacy benefits manager.

(5) In the case of an error that has no actual financial harm to the patient or third-party payor, the pharmacy benefits manager shall not assess a charge against the pharmacy.

(6) If a pharmacy has entered into a corrective action plan with a pharmacy benefits manager, and if the pharmacy fails to comply with the corrective action plan in a manner that results in overpayments being made by the pharmacy benefits manager to the pharmacy, the pharmacy benefits manager may recover the overpaid amounts. For purposes of this paragraph, "corrective action plan" means an agreement entered into by a pharmacy benefits manager and a pharmacy which is intended to promote accurate submission and payment of pharmacy claims.

(7) During the audit period, interest on any outstanding balance shall not accrue for the pharmacy benefits manager or the pharmacy. For purposes of this rule, the audit period begins with the notice of the audit and ends with a final determination of the audit report.

59.4(2) Notwithstanding Iowa Code section 510B.7 and any other provision in this rule, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating the recoupment or contractual penalty for an audit unless required by state or federal laws or regulations. The entity may not use the accounting practice of extrapolation in a manner more stringent than that required by state or federal laws or regulations.

59.4(3) Recoupment of any disputed funds shall occur only after final disposition of the audit, including the appeals process as set forth in subrules 59.4(4) and 59.4(5).

59.4(4) Each pharmacy benefits manager conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the pharmacy benefits manager. The pharmacy benefits manager shall conduct a review of the unfavorable preliminary audit report. The cost of the audit review shall be paid by the pharmacy benefits manager. If, following the review, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is unsubstantiated, the pharmacy benefits manager shall dismiss the unsubstantiated audit report or unsubstantiated portion of the audit report without the necessity of any further proceedings.

59.4(5) A pharmacy benefits manager shall establish a process for an independent third-party review of final audit findings. If, following the appeal of an audit report and upon conducting an audit review, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is found to be substantiated, the pharmacy benefits manager shall notify the pharmacy in writing of its right to request an independent third-party review of the final audit findings and the process used to request such a review. If a pharmacy requests an independent third-party review of the final audit findings and the audit report is found to be substantiated, the cost of the third-party review shall be paid by the pharmacy. If a pharmacy requests an independent third-party review of the final audit findings and the audit report is found to be unsubstantiated, the cost of the third-party review shall be paid by the pharmacy benefits manager. If the reviewer finds partially in favor of both parties, the reviewer shall apportion the costs accordingly and each party will bear a portion of the costs of the review.

59.4(6) Rescinded IAB 4/27/16, effective 6/1/16.

59.4(7) Each pharmacy benefits manager conducting an audit shall, after completion of any review process, provide a copy of the final audit report to the third-party payor within ten business days of completing the report.

59.4(8) This rule shall not apply to any investigative audit which involves fraud, willful misrepresentation, abuse, or any other statutory provision which authorizes investigations relating to but not limited to insurance fraud.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.5(510B) Disclosure of national compendia used. Rescinded ARC 6890C, IAB 2/8/23, effective 3/15/23.

191—59.6(510B) Termination or suspension of contracts with pharmacies by pharmacy benefits managers.

59.6(1) A contract between a pharmacy benefits manager and a pharmacy shall include a provision describing notification procedures for contract termination. The contract shall require no less than 60 days' prior written notice by either party that wishes to terminate the contract.

59.6(2) Termination of a contract between a pharmacy benefits manager and a pharmacy or termination of a pharmacy from the network of the pharmacy benefits manager shall not release the pharmacy benefits manager from the obligation to make payments due to the pharmacy for contract-covered services rendered before the contract of the pharmacy was terminated.

59.6(3) The following apply to a termination or suspension of a contract with a pharmacy by a pharmacy benefits manager:

a. If the pharmacy benefits manager has evidence that the pharmacy has engaged in fraudulent conduct or poses a significant risk to patient care or safety, the pharmacy benefits manager may suspend the pharmacy from further performance under the contract only if written notice of the suspension and reasoning therefor is provided to the pharmacy, the third-party payor and the commissioner.

b. A pharmacy benefits manager shall neither take action, nor imply or state that it may or will take action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefits manager's provider network solely or mainly because the pharmacy files a complaint with any entity.

c. A pharmacy shall not be terminated or suspended from a network of a pharmacy benefits manager due to any disagreement with a decision of the pharmacy benefits manager to deny or limit benefits to a covered person or due to any assistance provided to a covered person by the pharmacy in obtaining reconsideration of a decision of the pharmacy benefits manager.

d. The pharmacy may request an independent third-party review of the final decision to terminate or suspend the contract between the pharmacy benefits manager and the pharmacy by filing with the pharmacy benefits manager a written request for an independent third-party review of the decision. This written request must be filed with the pharmacy benefits manager within 30 days of receipt of the final termination or suspension decision.

e. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be substantiated, the cost of the third-party review shall be paid by the pharmacy. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be unsubstantiated, the cost of the third-party review shall be paid by the pharmacy benefits manager.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.7(510B) Price change. Rescinded ARC 6890C, IAB 2/8/23, effective 3/15/23.

191—59.8(510B) Complaints.

59.8(1) System to record complaints. Each pharmacy benefits manager shall develop an internal system to record and report complaints. This system shall include but not be limited to the following information regarding each complaint:

- a.* The reason for the complaint and any factual documentation submitted by the complainant to support the complaint;
- b.* Contact name, address and telephone number of the pharmacy;
- c.* Prescription number;
- d.* Prescription reimbursement amount for any disputed claim;
- e.* Any disputed prescription claim payment date of fill;
- f.* Third-party payor benefits certificate;
- g.* The justification for final determination and outcome of the complaint, including but not limited to the section and language of the contract or provider manual that was used in making the determination;
- h.* The name of any pharmacy services administrative organization, if known by the pharmacy benefits manager, with which the pharmacy or the pharmacy benefits manager has a contract and that is involved in the matter; and
- i.* For complaints related to the maximum allowable cost or other pricing methodology used to pay a pharmacy, documentation demonstrating compliance with Iowa Code section 510B.8A as appropriate based on the nature of the complaint.

59.8(2) Quarterly complaint summary. A summary of all complaints received by the pharmacy benefits manager each calendar quarter shall be submitted to the commissioner, in a form and manner prescribed by the commissioner, within 30 days after the calendar quarter has ended. The summary shall include the following:

- a.* Name, address, telephone number and email address for a contact person for the pharmacy benefits manager;
- b.* Information related to any pharmacy's appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5);
- c.* Information related to any pharmacy's comment on or contest or appeal of a maximum allowable cost, maximum allowable cost list or other pricing methodology used to pay a pharmacy;
- d.* Information related to any request by a pharmacy for and the outcome of an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) "d";
- e.* A summary of the information listed in paragraph 59.8(1) "a," excluding documentation; and
- f.* The information listed in paragraphs 59.8(1) "b," "c," "d," "e," and "g."

59.8(3) Confidentiality. The quarterly complaint summary shall be confidential pursuant to subrule 59.10(5).

59.8(4) Inquiries and complaints from the commissioner.

a. A pharmacy benefits manager shall comply with Iowa Code section 507B.4A(1) in responding promptly to an inquiry from the commissioner, including a complaint.

b. When responding to an inquiry or complaint from the commissioner, a pharmacy benefits manager shall include the Food and Drug Administration National Drug Code number, the names of the manufacturers of the prescription drugs that are related to the inquiry, and the names of any pharmaceutical wholesalers, if:

(1) The pharmacy benefits managers can determine that information from their records and other knowledge of the subject matter of the inquiry or complaint; or

(2) The commissioner has provided enough information in the inquiry or complaint for the pharmacy benefits manager to identify such facts.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.9(510,510B) Duty to notify commissioner of fraud. A third-party payor that contracts with a pharmacy benefits manager to perform the third-party payor's services shall require the pharmacy benefits manager to follow Iowa Code section 507E.6 in notifying the commissioner of any detection of fraud, including but not limited to prescription drug diversion activity. "Prescription drug diversion activity," for purposes of this rule, means the diversion of prescription drugs from legal and medically necessary uses to uses that are illegal and not medically authorized or necessary. A pharmacy benefits manager shall follow the fraud detection protocol developed by the third-party payor or shall allow the third-party payor to review and agree to the pharmacy benefits manager's protocol.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.10(507,510,510B) Commissioner examinations of pharmacy benefits managers.

59.10(1) Cooperation of pharmacy benefits managers with the commissioner. A pharmacy benefits manager shall cooperate with the commissioner and comply with the commissioner's requests to aid with the commissioner's administration of Iowa Code chapters 507, 507B, 510, and 510B and this chapter, including cooperation and compliance with the commissioner in conducting an examination of a pharmacy benefits manager pursuant to Iowa Code chapter 507, and cooperation with the commissioner in conducting an investigation pursuant to Iowa Code chapter 507B.

59.10(2) Maintenance of records. A pharmacy benefits manager shall maintain the records necessary to demonstrate to the commissioner compliance with this chapter for the duration of any written agreement plus five years. A pharmacy benefits manager shall provide the commissioner easy accessibility to records for examination, audit and inspection to verify compliance with this chapter, including but not limited to all contracts and provider manuals governing pharmacies and pharmacy networks.

59.10(3) Disclosure of payments received by the pharmacy benefits manager.

a. The commissioner may request, and a pharmacy benefits manager shall disclose to the commissioner, the amount of all payments received by the pharmacy benefits manager, and the nature, type, and amounts of all other revenues that the pharmacy benefits manager receives.

b. For purposes of this subrule, "payments received by the pharmacy benefits manager" includes but is not limited to the aggregate amount of the following types of payments:

(1) A remuneration collected by the pharmacy benefits manager that is allocated to a third-party payor;

(2) An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer; and

(3) Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or other entity for a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered person, or any other administrative function.

59.10(4) *Disclosure of pricing methodology used to pay a pharmacy.* The commissioner may require, and a pharmacy benefits manager shall submit to the commissioner, pursuant to Iowa Code section 510B.8A, information related to the pharmacy benefits manager's pricing methodology for maximum allowable cost or other pricing methodology used to pay a pharmacy.

59.10(5) *Confidentiality.* Information provided by a pharmacy benefits manager to the commissioner under this rule or under rule 191—59.8(510B) shall be deemed confidential under Iowa Code sections 22.7(2), 22.7(3), 22.7(6), 505.8(8), 505.8(9), 507.14, and 510B.10, as applicable.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.11(510B,510C) Pharmacy benefits manager annual report.

59.11(1) *Filing of annual report.* In addition to submitting the third-party administrator annual report required under rule 191—58.11(510), each pharmacy benefits manager shall submit to the commissioner on or before February 15 of each year the annual report required by Iowa Code section 510C.2 (PBM annual report). The pharmacy benefits manager shall follow the instructions and use the online submission form provided on the Iowa insurance division's website (iid.iowa.gov) to file the PBM annual report.

59.11(2) *Verification.* At least two officers of the pharmacy benefits manager shall certify in writing that they verified the accuracy of the PBM annual report.

59.11(3) *Electronic filing.* Each pharmacy benefits manager shall submit the PBM annual report electronically as set forth in the instructions, unless otherwise specifically authorized by the commissioner.

59.11(4) *Public access.* The commissioner shall publish on the Iowa insurance division's website (iid.iowa.gov) the nonconfidential information received in the PBM annual report.

59.11(5) *Completeness of PBM annual report.* All information required by the commissioner must be submitted before the PBM annual report shall be considered complete.

59.11(6) *Penalties.* A pharmacy benefits manager that fails to timely submit to the commissioner a complete PBM annual report shall pay a late fee of \$100. If a pharmacy benefits manager fails to submit a complete PBM annual report by May 15, the pharmacy benefits manager shall be subject to penalties as set forth in rule 191—59.12(505,507,507B,510,510B,510C,514L).

[ARC 4578C, IAB 7/31/19, effective 9/4/19; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

191—59.12(505,507,507B,510,510B,510C,514L) Failure to comply. Failure to comply with the provisions of this chapter or with Iowa Code chapters 510, 510B and 510C or failure to comply with 191—Chapters 58 and 78 or Iowa Code chapters 507 and 514L as they are relevant to the administration of this chapter shall subject the pharmacy benefits manager to the penalties of Iowa Code chapter 507B. No provision of these rules or the Iowa Code chapters mentioned herein may be waived or modified by contract.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16; ARC 4578C, IAB 7/31/19, effective 9/4/19; ARC 6739C, IAB 12/14/22, effective 1/1/23; ARC 6890C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapters 17A, 505, 507, 507B, 510, 510B, 510C and 514L.

[Filed 7/25/08, Notice 5/7/08—published 8/13/08, effective 9/17/08]*

[Editorial change: IAC Supplement 9/24/08]

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[Filed ARC 2518C (Notice ARC 2433C, IAB 3/2/16), IAB 4/27/16, effective 6/1/16]

*The September 17, 2008, effective date of subrules 59.6(3), 59.6(5) and 59.7(6) was delayed for 70 days by the Administrative Rules Review Committee at its meeting held September 9, 2008. At its meeting held October 14, 2008, the Committee voted to lift the delay, effective October 15, 2008.

[Filed ARC 4578C (Notice ARC 4482C, IAB 6/5/19), IAB 7/31/19, effective 9/4/19]
[Filed Emergency ARC 6739C, IAB 12/14/22, effective 1/1/23]
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CHAPTER 12
GENERAL ACCREDITATION STANDARDS
[Prior to 9/7/88, see Public Instruction Department[670] Ch 4]

PREAMBLE

The goal for the early childhood through twelfth grade educational system in Iowa is to improve the learning, achievement, and performance of all students so they become successful members of a community and workforce. It is expected that each school and school district shall continue to improve its educational system so that more students will increase their learning, achievement, and performance.

Accreditation focuses on an ongoing school improvement process for schools and school districts. However, general accreditation standards are the minimum requirements that must be met by an Iowa public school district to be accredited. A public school district that does not maintain accreditation shall be merged, by the state board of education, with one or more contiguous school districts as required by Iowa Code subsection 256.11(12). A nonpublic school must meet the general accreditation standards if it wishes to be designated as accredited for operation in Iowa.

General accreditation standards are intended to fulfill the state's responsibility for making available an appropriate educational program that has high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of race, color, national origin, gender, disability, religion, creed, marital status, geographic location, sexual orientation, gender identity, or socioeconomic status.

With local community input, school districts and accredited nonpublic schools shall incorporate accountability for student achievement into comprehensive school improvement plans designed to increase the learning, achievement, and performance of all students. As applicable, and to the extent possible, comprehensive school improvement plans shall consolidate federal and state program goal setting, planning, and reporting requirements. Provisions for multicultural and gender fair education, technology integration, global education, gifted and talented students, at-risk students, students with disabilities, and the professional development of all staff shall be incorporated, as applicable, into the comprehensive school improvement plan. See subrules 12.5(8) to 12.5(13), 12.7(1), and 12.8(1).

DIVISION I
GENERAL STANDARDS

281—12.1(256) General standards.

12.1(1) *Schools and school districts governed by general accreditation standards.* These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade 12 school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade 12 schools operated under nonpublic auspices. Each school district shall take affirmative steps to integrate students in attendance centers and courses. Schools and school districts shall collect and annually review district, attendance center, and course enrollment data on the basis of race, national origin, gender, and disability. Equal opportunity in programs shall be provided to all students regardless of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, socioeconomic status, disability, religion, or creed. Nothing in this rule shall be construed as prohibiting any bona fide religious institution from imposing qualifications based upon religion when such qualifications are related to a bona fide religious purpose.

12.1(2) *School board.* Each school or school district shall be governed by an identifiable authority which shall exercise the functions necessary for the effective operation of the school and referred to in these rules as the "board."

12.1(3) *Application for accreditation.* The board of any school or school district that is not accredited on the effective date of these standards and which seeks accreditation shall file an application with the director, department of education, on or before the first day of January of the school year preceding the school year for which accreditation is sought.

12.1(4) Accredited schools and school districts. Each school or school district receiving accreditation under the provisions of these standards shall remain accredited except when by action of the state board of education it is removed from the list of accredited schools maintained by the department of education in accordance with Iowa Code subsections 256.11(11) and 256.11(12).

12.1(5) When nonaccredited. A school district shall be nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. A nonpublic school shall be nonaccredited on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

12.1(6) Alternative provisions for accreditation. School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, nonresident students; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

12.1(7) Minimum school calendar: set by annual hours or days of instruction. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall adopt a school calendar that sets the number of days or hours of required attendance for student instruction, staff development and in-service time, and time for parent-teacher conferences. Prior to adopting the school calendar, the board of directors of a school district shall hold a public hearing on any proposed school calendar. The board and authorities in charge of an accredited nonpublic school shall notify the department annually of their decision to have a calendar based on days or based on hours. The length of the school calendar does not dictate the length of contract hours or days of employment for instructional and noninstructional staff. Time recorded under either a days or hours calendar system may include passing time between classes but shall exclude the lunch period. Time spent on parent-teacher conferences shall be considered instructional time. The school calendar may be operated any time during the school year of July 1 to June 30 as defined by Iowa Code section 279.10 as amended by 2013 Iowa Acts, House File 215, section 81. A minimum of 180 days or 1,080 hours of instruction shall be set in the school calendar, for school districts and accredited nonpublic schools beginning no sooner than a day during the calendar week in which the first day of September falls, and shall be used for student instruction. However, if the first day of September falls on a Sunday, school may begin any day during the calendar week preceding September 1. These 180 days shall meet the requirements of “day of school” for those districts or accredited nonpublic schools that are utilizing a schedule based on days, defined in paragraph 12.1(8) “a,” “minimum school day” defined in subrule 12.1(9), and “day or hour of attendance” defined in subrule 12.1(10). (Exception: A school or school district may, by board policy, excuse graduating seniors up to five days or 30 hours of instruction after school or school district requirements for graduation have been met.) If additional days are added to the regular school calendar because of inclement weather, a graduating senior who has met the school district’s requirements for graduation may be excused from attendance during the extended school calendar. A school district may begin employment of instructional and noninstructional staff, for in-service training and development purposes, earlier than the first day of school. A school or school district choosing a schedule based on hours shall follow the definition of “hour of school” set forth in paragraph 12.1(8) “b.”

12.1(8) Day and hour of school.

a. Day of school. A day of school is a day during which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. An exception is if either the elementary or secondary grades are closed and provided that the time missed is made up at some other point during the school calendar so as to meet the minimum of 180 days or 1,080 hours of instruction for all grades 1 through 12.

b. Hour of school. For schools or school districts adopting a calendar based on a 1,080-hour minimum schedule, an official hour of school is an hour in which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. For

purposes of this rule, an “hour” is defined as 60 minutes. The calculation of minimum hours shall exclude the lunch period. Passing time between classes may be counted as part of the hour requirement. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. Schools or school districts have flexibility on how they can reach the threshold of 1,080 hours of instruction but must keep annual documentation of how they met that standard. The school calendar may include more than or less than or may equal the 180-day schedule. The hours included in an individual day under an hours format may vary.

12.1(9) *Minimum school day.* A school day, for those utilizing a school calendar based on days, shall consist of a minimum of 6 hours of instructional time for all grades 1 through 12. The minimum hours shall exclude the lunch period. Passing time between classes may be counted as part of the 6-hour requirement. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff.

12.1(10) *Day or hour of attendance.* A day or hour of attendance shall be a day or hour during which students were present and under the guidance and instruction of the instructional professional staff. When staff development designated by the board or by authorities in charge of an accredited nonpublic school occurs outside of the time required for a “minimum school day,” students shall be counted in attendance.

12.1(11) *Kindergarten.* The number of instructional days or hours within the school calendar and the length of the school day for kindergarten shall be defined by the board or by authorities in charge of an accredited nonpublic school that operates a kindergarten program.

[ARC 1115C, IAB 10/16/13, effective 11/20/13]

DIVISION II DEFINITIONS

281—12.2(256) Definitions. For purposes of these rules, the following definitions shall apply:

“*Alternative options education programs*” means alternative programs or schools as identified in Iowa Code section 280.19A.

“*Alternative program*” means a class or environment established within the regular educational program and designed to accommodate specific student educational needs such as, but not limited to, work-related training; reading, mathematics or science skills; communication skills; social skills; physical skills; employability skills; study skills; or life skills.

“*Alternative school*” means an environment established apart from the regular educational program and that includes policies and rules, staff, and resources designed to accommodate student needs and to provide a comprehensive education consistent with the student learning goals and content standards established by the school district or by the school districts participating in a consortium. Students attend by choice.

“*Annual improvement goals*” means the desired one-year rate of improvement for students. Data from multiple measures may be used to determine the rate of improvement.

“*At-risk student*” means any identified student who needs additional support and who is not meeting or not expected to meet the established goals of the educational program (academic, personal/social, career/vocational). At-risk students include but are not limited to students in the following groups: homeless children and youth, dropouts, returning dropouts, and potential dropouts.

“*Baseline data*” means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

“*Benchmarks*” means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

“*Board*” means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

“Competency-based education” means that learners advance through content or earn credit based on demonstration of proficiency of competencies. Proficiency for this context is the demonstrated skill or knowledge required to advance to and be successful in higher levels of learning in that content area. Some students may advance through more content or earn more credit than in a traditional school year while others might take more than a traditional school year to advance through the same content and to earn credit. A student must meet the requirements of 12.5(14) to be awarded credit in a competency-based system of education.

“Comprehensive school improvement plan” means a design that shall describe how the school or school district will increase student learning, achievement, and performance. This ongoing improvement design may address more than student learning, achievement, and performance.

“Content standards” means broad statements about what students are expected to know and be able to do.

“Curriculum” means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

“Department” means the department of education.

“Districtwide” means all attendance centers within a school district or accredited nonpublic school.

“Districtwide assessments” means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the comparison of the same group of students over time as they progress through the grades or the cross-sectional comparison of students at the same grades over multiple years.

“Districtwide progress” means the quantifiable change in school or school district student achievement and performance.

“Dropout” means a school-age student who is served by a public school district and enrolled in any of grades seven through twelve and who does not attend school or withdraws from school for a reason other than death or transfer to another approved school or school district or has been expelled with no option to return.

“Educational program.” The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program shall provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

“Enrolled student” means a person that has officially registered with the school or school district and is taking part in the educational program.

“Incorporate” means integrating career education, multicultural and gender fair education, technology education, global education, higher-order thinking skills, learning skills, and communication skills into the total educational program.

“Indicators” provide information about the general status, quality, or performance of an educational system.

“Library program” means an articulated sequential kindergarten through grade 12 library or media program that enhances student achievement and is integral to the school district’s curricula and instructional program. The library program is planned and implemented by a qualified teacher librarian working collaboratively with the district’s administration and instructional staff. The library program services provided to students and staff shall include the following:

1. Support of the overall school curricula;
2. Collaborative planning and teaching;
3. Promotion of reading and literacy;
4. Information literacy instruction;
5. Access to a diverse and appropriate school library collection; and
6. Learning enhancement through technologies.

“Long-range goals” means desired targets to be reached over an extended period of time.

“Multiple assessment measures,” for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

“Performance levels.” The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels shall describe what all students ought to know or be able to do if their achievement or performance is deemed proficient or advanced. The third level shall describe students who are not yet performing at the proficient level. A school or school district may establish more than three performance levels that include all students for districtwide or other assessments.

“Physical activity” means any movement, manipulation, or exertion of the body that can lead to improved levels of physical fitness and quality of life.

“Potential dropouts” means resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

1. High rate of absenteeism, truancy, or frequent tardiness.
2. Limited or no extracurricular participation or lack of identification with school including, but not limited to, expressed feelings of not belonging.
3. Poor grades including, but not limited to, failing in one or more school subjects or grade levels.
4. Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

“Prekindergarten program” includes a school district’s implementation of the preschool program established pursuant to 2007 Iowa Acts, House File 877, section 2, and is otherwise described herein in subrule 12.5(1).

“Proficient,” as it relates to content standards, characterizes student performance at a level that is acceptable by the school or school district.

“Returning dropouts” means resident pupils who have been enrolled in a public or nonpublic school in any of grades seven through twelve who withdrew from school for a reason other than transfer to another school or school district and who subsequently enrolled in a public school in the district.

“School” means an accredited nonpublic school.

“School counseling program” means an articulated sequential kindergarten through grade 12 program that is comprehensive in scope, preventive in design, developmental in nature, driven by data, and integral to the school district’s curricula and instructional program. The program is implemented by at least one school counselor, appropriately licensed by the board of educational examiners, who works collaboratively with the district’s administration and instructional staff. The program standards are described in subrule 12.3(11). The program’s delivery system components shall include the following:

1. School guidance curriculum;
2. Support of the overall school curriculum;
3. Individual student planning;
4. Responsive services; and
5. System support.

“School district” means a public school district.

“School improvement advisory committee” means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership shall include students, parents, teachers, administrators, and representatives from the local community which may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation of the following: race, gender, national origin, and disability. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

“Student learning goals” means general statements of expectations for all graduates.

“Students with disabilities” means students who have individualized education programs regardless of the disability.

“Subgroups” means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

“*Successful employment in Iowa*” may be determined by, but is not limited to, reviewing student achievement and performance based on locally identified indicators such as earnings, educational attainment, reduced unemployment, and the attainment of employability skills.
[ARC 7783B, IAB 5/20/09, effective 6/24/09; ARC 1116C, IAB 10/16/13, effective 11/20/13]

DIVISION III
ADMINISTRATION

281—12.3(256) Administration. The following standards shall apply to the administration of accredited schools and school districts.

12.3(1) Board records. Each board shall adopt by written policy a system for maintaining accurate records. The system shall provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department of education. Financial records of school districts shall be maintained in a manner as to be easily audited according to accepted accounting procedures.

12.3(2) Policy manual. The board shall develop and maintain a policy manual which provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) Personnel evaluation. Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections 279.14 and 279.23A.

12.3(4) Student records. Each board shall require its administrative staff to establish and maintain a system of student records. This system shall include for each student a permanent office record and a cumulative record.

The permanent office record shall serve as a historical record of official information concerning the student’s education. The permanent office record shall be recorded and maintained under the student’s legal name. At a minimum, the permanent office record should contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record shall provide a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the “working record” used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record shall be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student’s permanent record may include information contained in the cumulative record as defined above.

The board shall adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

12.3(5) Requirements for graduation. Each board providing a program through grade 12 shall adopt a policy establishing the requirements students must meet for high school graduation. This policy shall make provision for early graduation and shall be consistent with these requirements, Iowa Code section 280.14, and the requirements in the introductory paragraph of subrule 12.5(5).

12.3(6) Student responsibility and discipline. The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall

include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff as detailed in subrule 12.3(13); violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, disability, religion, creed, or socioeconomic status.

The board shall publicize its support of these policies, its support of the staff in enforcing them, and the staff's accountability for implementing them.

12.3(7) *Health services.* Rescinded IAB 12/5/07, effective 1/9/08.

12.3(8) *Audit of school funds.* This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm shall be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(9) *School or school district building grade-level organization.* The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code section 279.39.

12.3(10) *Report on accredited nonpublic school students.* Rescinded IAB 12/5/07, effective 1/9/08.

12.3(11) *Standards for school counseling programs.* The board of directors of each school district shall establish a K-12 comprehensive school counseling program, driven by student data and based on standards in academic, career, personal, and social areas, which supports the student achievement goals of the total school curriculum and to which all students have equitable access.

a. A qualified school counselor, licensed by the board of educational examiners, who works collaboratively with students, teachers, support staff and administrators shall direct the program and provide services and instruction in support of the curricular goals of each attendance center. The school counselor shall be the member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The school counselor and classroom teachers shall collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on the following:

(1) Sequentially presented curriculum, programs, and responsive services that address growth and development of all students; and

(2) Attainment of student competencies in academic, career, personal, and social areas.

b. The program shall be regularly reviewed and revised and shall be designed to provide all of the following:

(1) Curriculum that is embedded throughout the district's overall curriculum and systemically delivered by the school counselor in collaboration with instructional staff through classroom and group activities and that consists of structured lessons to help students achieve desired competencies and to provide all students with the knowledge and skills appropriate for their developmental levels;

(2) Individual student planning through ongoing systemic activities designed to help students establish educational and career goals to develop future plans;

(3) Responsive services through intervention and curriculum that meet students' immediate and future needs as occasioned by events and conditions in students' lives and that may require any of the following: individual or group counseling; consultation with parents, teachers, and other educators; referrals to other school support services or community resources; peer helping; and information; and

(4) Systemic support through management activities that establish, maintain, and enhance the total school counseling program, including professional development, consultation, collaboration, program management, and operations.

12.3(12) *Standards for library programs.* The board of directors of each school district shall establish a K-12 library program to support the student achievement goals of the total school curriculum.

a. A qualified teacher librarian, licensed by the board of educational examiners, who works with students, teachers, support staff and administrators shall direct the library program and provide services and instruction in support of the curricular goals of each attendance center. The teacher librarian shall be a member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The teacher librarian and classroom teachers shall collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on promoting inquiry and critical thinking; providing information literacy learning experiences to help students access, evaluate, use, create, and communicate information; enhancing learning and teaching through technology; and promoting literacy through reader guidance and activities that develop capable and independent readers.

b. The library program shall be regularly reviewed and revised and shall be designed to meet the following goals:

- (1) To provide for methods to improve library collections to meet student and staff needs;
- (2) To make connections with parents and the community;
- (3) To support the district's school improvement plan;
- (4) To provide access to or support for professional development for the teacher librarian;
- (5) To provide current technology and electronic resources to ensure that students become skillful and discriminating users of information;
- (6) To include a current and diverse collection of fiction and nonfiction materials in a variety of formats to support student and curricular needs; and
- (7) To include a plan for annually updating and replacing library materials, supports, and equipment.

c. The board of directors of each school district shall adopt policies to address selection and reconsideration of school library materials; confidentiality of student library records; and legal and ethical use of information resources, including plagiarism and intellectual property rights.

12.3(13) *Policy declaring harassment and bullying against state and school policy.* The policy adopted by the board regarding harassment of or by students and staff shall declare harassment and bullying in schools, on school property, and at any school function or school-sponsored activity regardless of its location to be against state and school policy. The board shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

- (1) School employees, volunteers, and students in school, on school property, or at any school function or school-sponsored activity shall not engage in harassing and bullying behavior.
- (2) School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, a witness, or an individual who has reliable information about such an act of harassment or bullying.

b. A definition of harassment and bullying consistent with the following: Harassment and bullying shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on the student's actual or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status, and which creates an objectively hostile school environment that meets one or more of the following conditions:

- (1) Places the student in reasonable fear of harm to the student's person or property.
- (2) Has a substantially detrimental effect on the student's physical or mental health.
- (3) Has the effect of substantially interfering with a student's academic performance.

(4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

The local board policy must set forth all 17 of the above-enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics.

c. A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention, reporting, and investigation of harassment or bullying.

d. The consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.

e. A procedure for reporting an act of harassment or bullying, including the identification by job title of the school official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.

f. A procedure for the prompt investigation of complaints, identifying either the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this subrule.

g. A statement of the manner in which the policy will be publicized.

The board shall integrate its policy into its comprehensive school improvement plan. The board shall develop and maintain a system to collect harassment and bullying incidence data, and report such data, on forms specified by the department, to the local community and to the department.

12.3(14) Policy prohibiting the aiding and abetting of sexual abuse.

a. *General.* The department and each public school district and area education agency shall adopt policies that prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

b. *Exception.* The requirements of paragraph 12.3(14) "a" shall not apply if all of the following conditions are met.

(1) The information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations.

(2) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct have investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law; or the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of, the alleged misconduct; or the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within four years of the date on which the information was reported to a law enforcement agency.

[ARC 0016C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 3980C, IAB 8/29/18, effective 10/3/18]

DIVISION IV
SCHOOL PERSONNEL

281—12.4(256) School personnel. License/certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of educational examiners. The following standards shall apply to personnel employed in accredited schools.

12.4(1) Instructional professional staff. Each person who holds a license/certificate endorsed for the service for which that person is employed shall be eligible for classification as a member of the instructional professional staff.

12.4(2) *Noninstructional professional staff.* A person who holds a statement of professional recognition, including but not limited to a physician, dentist, nurse, speech therapist, or a person in one of the other noninstructional professional areas designated by the state board of education, shall be eligible for classification as a member of the noninstructional professional staff.

12.4(3) *Basis for approval of professional staff.* Each member of the professional staff shall be classified as either instructional or noninstructional. An instructional professional staff member shall be regarded as approved when holding either an appropriate license/certificate with endorsement or endorsements, or a license/certificate with an endorsement statement, indicating the specific teaching assignments that may be given. A noninstructional professional staff member shall be regarded as approved when holding a statement of professional recognition for the specific type of noninstructional professional school service for which employed.

12.4(4) *Required administrative personnel.* Each board that operates both an elementary school and a secondary school shall employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this requirement by contracting with its area education agency for “superintendency services” as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as an elementary principal or as a high school principal in that school or school district provided that the superintendent holds the proper licensure/certification. For purposes of this subrule, high school means a school which commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code subsection 279.23(4).

12.4(5) *Staffing policies—elementary schools.* The board operating an elementary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school shall employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements.

When grades seven and eight are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools shall apply. When grades seven and eight are part of an organized and administered middle school, the staffing policies adopted by the board for elementary schools shall apply.

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school shall employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position may be combined with that of superintendent, but one person may not serve as elementary principal, secondary principal, and superintendent.

12.4(7) *Principal.* “Principal” means a licensed/certificated member of a school’s instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board’s policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school’s student activities program.

12.4(8) *Teacher.* A teacher shall be defined as a member of the instructional professional staff who holds a license/certificate endorsed for the type of position in which employed. A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school’s objectives, either singly or in concert with other professional staff members; shares responsibility with the total professional staff for developing educational procedures and student activities to be used in achieving the school’s objectives; supervises educational aides who assist in serving students for whom the teacher is responsible; and

evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

12.4(9) *Educational assistant.* An educational assistant shall be defined as an employee who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

During the initial year of employment, an educational assistant shall complete staff development approved by the board as provided in subrule 12.7(1).

12.4(10) *Record of license/certificate or statement of professional recognition.* The board shall require each administrator, teacher, support service staff member, and noninstructional professional staff member on its staff to supply evidence that each holds a license/certificate or statement of professional recognition which is in force and valid for the type of position in which employed.

12.4(11) *Record required regarding teacher and administrative assignments.* The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file shall consist of legal licenses/certificates or copies thereof for all members of the instructional professional staff, including substitute teachers, showing that they are eligible for the position in which employed. The official shall also maintain on file a legal license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records shall be on file at the beginning of and throughout each school year and shall be updated annually to reflect all professional growth.

On December 1 of each year, the official shall verify to the department of education the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report shall be on forms provided by the department of education and shall identify all persons holding authorizations and their specific assignment(s) with the authorization(s).

12.4(12) *Nurses.* The board of each school district shall employ a school nurse and shall require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).

12.4(13) *Prekindergarten staff.* Prekindergarten teachers shall hold a license/certificate valid for the prekindergarten level. The board shall employ personnel as necessary to provide effective supervision and instruction in the prekindergarten program.

12.4(14) *Physical examination.* Rescinded IAB 2/22/12, effective 3/28/12.

12.4(15) *Support staff.* The board shall develop and implement procedures for the use of educational support staff to augment classroom instruction and to meet individual student needs. These staff members may be employed by the board or by the area education agency.

12.4(16) *Volunteer.* A volunteer shall be defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the school or school district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

[ARC 0016C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

DIVISION V
EDUCATION PROGRAM

281—12.5(256) Education program. The following education program standards shall be met by schools and school districts for accreditation with the start of the 1989-1990 school year.

12.5(1) *Prekindergarten program.* If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. A prekindergarten

teacher shall hold a license/certificate licensing/certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

12.5(2) Kindergarten program. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed/certificated to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subrule only if the nonpublic school offers a kindergarten program.

12.5(3) Elementary program, grades 1-6. The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music, and visual art. Computer science instruction incorporating the standards established under rule 281—12.11(256) shall be offered in at least one grade level commencing with the school year beginning July 1, 2023.

In implementing the elementary program standards, the following general curriculum definitions shall be used.

a. English-language arts. English-language arts instruction shall include the following communication processes: speaking; listening; reading; writing; viewing; and visual expression and nonverbal communication. Instruction shall incorporate language learning and creative, logical, and critical thinking. The following shall be taught: oral and written composition; communication processes and skills, including handwriting and spelling; literature; creative dramatics; and reading.

b. Social studies. Social studies instruction shall include citizenship education, history, and social sciences. Democratic beliefs and values, problem-solving skills, and social and political participation skills shall be incorporated. Instruction shall encompass geography, history of the United States and Iowa, and cultures of other peoples and nations. American citizenship, including the study of national, state, and local government; and the awareness of the physical, social, emotional and mental self shall be infused in the instructional program.

c. Mathematics. Mathematics instruction shall include number sense and numeration; concepts and computational skills with whole numbers, fractions, mixed numbers and decimals; estimation and mental arithmetic; geometry; measurement; statistics and probability; and patterns and relationships. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. Science. Science instruction shall include life, earth, and physical science and shall incorporate hands-on process skills; scientific knowledge; application of the skills and knowledge to students and society; conservation of natural resources; and environmental awareness.

e. Health. Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; substance abuse and nonuse, encompassing the effects of alcohol, tobacco, drugs, and poisons on the human body; human sexuality, self-esteem, stress management, and interpersonal relationships; emotional and social health; health resources; and prevention and control of disease, and the characteristics of communicable diseases, including acquired immune deficiency syndrome.

f. Physical education. Physical education instruction shall include movement experiences and body mechanics; fitness activities; rhythmic activities; stunts and tumbling; simple games and relays; sports skills and activities; and water safety.

g. Traffic safety. Traffic safety instruction shall include pedestrian safety; bicycle safety; auto passenger safety; school bus passenger safety; seat belt use; substance education; and the application of legal responsibility and risk management to these concepts.

h. Music. Music instruction shall include skills, knowledge, and attitudes and shall include singing and playing music; listening to and using music; reading and writing music; recognizing the value of

the world's musical heritage; respecting individual musical aspirations and values; and preparing for consuming, performing, or composing.

i. Visual art. Visual art instruction shall include perceiving, comprehending, and evaluating the visual world; viewing and understanding the visual arts; developing and communicating imaginative and inventive ideas; and making art.

12.5(4) Junior high program, grades 7 and 8. The following shall be taught in grades 7 and 8: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, music, visual art, family and consumer education, career education, and technology education. Instruction in the following areas shall include the contributions and perspectives of persons with disabilities, both men and women, and persons from diverse racial and ethnic groups, and shall be designed to eliminate career and employment stereotypes. Computer science instruction incorporating the standards established under rule 281—12.11(256) shall be offered in at least one grade level commencing with the school year beginning July 1, 2023.

In implementing the junior high program standards, the following general curriculum definitions shall be used.

a. English-language arts. Same definition as in 12.5(3) "a" with the exclusion of handwriting.

b. Social studies. Social studies instruction shall include citizenship education, history and social sciences. Democratic beliefs and values, problem-solving skills, and social and political participation skills shall be incorporated. Instruction shall encompass history, economics, geography, government including American citizenship, behavioral sciences, and the cultures of other peoples and nations. Strategies for continued development of positive self-perceptions shall be infused.

c. Mathematics. Mathematics instruction shall include number and number relationships including ratio, proportion, and percent; number systems and number theory; estimation and computation; geometry; measurement; statistics and probability; and algebraic concepts of variables, patterns, and functions. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. Science. Same definition as in 12.5(3) "d."

e. Health. Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; substance abuse and nonuse, encompassing the effects of alcohol, tobacco, drugs, and poisons on the human body; human sexuality, self-esteem, stress management, and interpersonal relationships; emotional and social health; health resources; and prevention and control of disease and the characteristics of communicable diseases, including sexually transmitted diseases and acquired immune deficiency syndrome.

f. Physical education. Physical education shall include the physical fitness activities that increase cardiovascular endurance, muscular strength, and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; leisure and lifetime activities.

g. Music. Same definition as in 12.5(3) "h" with the addition of using music as an avocation or vocation.

h. Visual art. Same definition as in 12.5(3) "i" with the addition of using visual arts as an avocation or vocation.

i. Family and consumer education. Family and consumer education instruction shall include the development of positive self-concept, understanding personal growth and development and relationships with peers and family members in the home, school and community, including men, women, minorities and persons with disabilities. Subject matter emphasizes the home and family, including parenting, child development, textiles and clothing, consumer and resource management, foods and nutrition, housing, and family and individual health. This subrule shall not apply to nonpublic schools.

j. Career education. Career education instruction shall include exploration of employment opportunities, experiences in career decision making, and experiences to help students integrate work values and work skills into their lives. This subrule shall not apply to nonpublic schools. However, nonpublic schools shall comply with subrule 12.5(7).

k. Technology education. Technology education instruction shall include awareness of technology and its impact on society and the environment; furthering students' career development by contributing to their scientific principles, technical information and skills to solve problems related to an advanced technological society; and orienting students to technologies which impact occupations in all six of the required service areas. The purpose of this instruction is to help students become technologically literate and become equipped with the necessary skills to cope with, live in, work in, and contribute to a highly technological society. This subrule shall not apply to nonpublic schools.

l. Secondary credit.

(1) An individual pupil in a grade that precedes ninth grade may take a course for secondary credit if all of the following are true:

1. The pupil satisfactorily completes the course.
2. The course is taught by a teacher licensed by the Iowa board of educational examiners for grades 9 through 12 and endorsed in the subject area.
3. The course meets all components listed in subrule 12.5(5) for the specific curricular area.
4. The board of the school district or the authorities in charge of the nonpublic school have developed enrollment criteria that a student must meet to be enrolled in the course.

(2) If a student meets the requirement of subparagraph 12.5(4)“l”(1), the school district or accredited nonpublic school of enrollment shall issue high school credit for the unit to the student unless the student is unable to demonstrate proficiency or the school district or accredited nonpublic school determines that the course unit completed by the student does not meet the school district's or accredited nonpublic school's standards, as appropriate. If a student is denied credit under this paragraph, the school district or accredited nonpublic school denying credit shall provide to the student's parent or guardian in writing the reason for the denial. If credit is awarded under this paragraph, the credit must apply toward graduation requirements of the district or accredited nonpublic school.

12.5(5) High school program, grades 9-12. In grades 9 through 12, a unit is a course or equivalent related components or partial units taught throughout the academic year as defined in subrule 12.5(14). The following shall be offered and taught as the minimum program: English-language arts, six units; social studies, five units; mathematics, six units as specified in 12.5(5)“c”; science, five units; health, one unit; physical education, one unit; fine arts, three units; world language, four units; and vocational education, 12 units as specified in 12.5(5)“i.” Beginning with the 2010-2011 school year graduating class, all students in schools and school districts shall satisfactorily complete at least four units of English-language arts, three units of mathematics, three units of science, three units of social studies, and one full unit of physical education as conditions of graduation. The three units of social studies may include the existing graduation requirements of one-half unit of United States government and one unit of United States history.

In implementing the high school program standards, the following curriculum standards shall be used.

a. English-language arts (six units). English-language arts instruction shall include the following communication processes: speaking; listening; reading; writing; viewing; and visual expression and nonverbal communication. Instruction shall incorporate language learning and creative, logical, and critical thinking. The program shall encompass communication processes and skills; written composition; speech; debate; American, English, and world literature; creative dramatics; and journalism.

b. Social studies (five units). Social studies instruction shall include citizenship education, history, and the social sciences. Instruction shall encompass the history of the United States and the history and cultures of other peoples and nations including the analysis of persons, events, issues, and historical evidence reflecting time, change, and cause and effect. Instruction in United States government shall include an overview of American government through the study of the United States Constitution, the bill of rights, the federal system of government, and the structure and relationship between the national, state, county, and local governments; and voter education including instruction in statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot. Students' knowledge of the Constitution

and the bill of rights shall be assessed. Economics shall include comparative and consumer studies in relation to the market and command economic systems. Geography shall include the earth's physical and cultural features, their spatial arrangement and interrelationships, and the forces that affect them. Sociology, psychology, and anthropology shall include the scientific study of the individual and group behavior(s) reflecting the impact of these behaviors on persons, groups, society, and the major institutions in a society. Democratic beliefs and values, problem-solving skills, and social and political skills shall be incorporated. All students in grades nine through twelve must, as a condition of graduation, complete a minimum of one-half unit of United States government and one unit of United States history and receive instruction in the government of Iowa.

c. Mathematics (six units). Mathematics instruction shall include:

(1) Four sequential units which are preparatory to postsecondary educational programs. These units shall include strands in algebra, geometry, trigonometry, statistics, probability, and discrete mathematics. Mathematical concepts, operations, and applications shall be included for each of these strands. These strands shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

(2) Two additional units shall be taught. These additional units may include mathematical content as identified in, but not limited to, paragraphs 12.5(3) "c," 12.5(4) "c," and 12.5(5) "c"(1). These units are to accommodate the locally identified needs of the students in the school or school district. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. Science (five units). Science instruction shall include biological, earth, and physical science, including physics and chemistry. Full units of chemistry and physics shall be taught but may be offered in alternate years. All science instruction shall incorporate hands-on process skills; scientific knowledge; the application of the skills and knowledge to students and society; conservation of natural resources; and environmental awareness.

e. Health (one unit). Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome, current crucial health issues, human sexuality, self-esteem, stress management, and interpersonal relationships.

f. Physical education (one unit). Physical education shall include the physical fitness activities that increase cardiovascular endurance, muscular strength and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; leisure and lifetime activities.

All physically able students shall be required to participate in the program for a minimum of one-eighth unit during each semester they are enrolled except as otherwise provided in this paragraph. A twelfth-grade student may be excused from this requirement by the principal of the school in which the student is enrolled under one of the following circumstances:

(1) The student is enrolled in a cooperative, work-study, or other educational program authorized by the school which requires the student's absence from the school premises during the school day.

(2) The student is enrolled in academic courses not otherwise available.

(3) An organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement.

A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

The student's parent or guardian must request the excuse in writing. The principal shall inform the superintendent that the student has been excused.

g. Fine arts (three units). Fine arts instruction shall include at least two of the following:

(1) Dance. Dance instruction shall encompass developing basic movement skills; elementary movement concepts; study of dance forms and dance heritage; participating in dance; and evaluating dance as a creative art; and using dance as an avocation or vocation.

(2) Music. Music instruction shall include skills, knowledge, and attitudes and the singing and playing of music; listening to and using music; reading and writing music; recognizing the value of the world's musical heritage; respecting individual musical aspirations and values; preparing for consuming, performing, or composing; and using music as an avocation or vocation.

(3) Theatre. Theatre instruction shall encompass developing the internal and external resources used in the theatre process; creating theatre through artistic collaboration; relating theatre to its social context; forming aesthetic judgments; and using theatre as an avocation or vocation.

(4) Visual art. Visual art instruction shall include developing concepts and values about natural and created environments; critiquing works of art; evaluating relationships between art and societies; analyzing, abstracting, and synthesizing visual forms to express ideas; making art; and using visual art as an avocation or vocation.

h. World language (four units). The world language program shall be a four-unit sequence of uninterrupted study in at least one language, which may include American Sign Language. World language instruction shall include listening comprehension appropriate to the level of instruction; rateable oral proficiency; reading comprehension appropriate to the level of instruction; writing proficiency appropriate to the level of instruction; and cultural awareness.

All high schools shall offer and teach the first two units of the sequence. The third and fourth units must be offered. However, the department of education may, on an annual basis, waive the third and fourth unit requirements upon the request of the board. The board must document that a licensed/certificated teacher was employed and assigned a schedule that would have allowed students to enroll, that the class was properly scheduled, that students were aware of the course offerings, and that no students enrolled.

i. Vocational education—school districts (three units each in at least four of the six service areas). A minimum of three sequential units, of which only one may be a core unit, shall be taught in four of the following six service areas: agricultural education, business and office education, health occupations education, home economics education, industrial education, and marketing education. The instruction shall be competency-based; shall provide a base of knowledge which will prepare students for entry level employment, additional on-the-job training, and postsecondary education within their chosen field; shall be articulated with postsecondary programs of study, including apprenticeship programs; shall reinforce basic academic skills; shall include the contributions and perspectives of persons with disabilities, both men and women, and persons from diverse racial and ethnic groups. Vocational core courses may be used in more than one vocational service area. Multioccupations may be used to complete a sequence in more than one vocational service area; however, a core course(s) and multioccupations cannot be used in the same sequence. If a district elects to use multioccupations to meet the requirements in more than one service area, documentation must be provided to indicate that a sufficient variety of quality training stations be available to allow students to develop occupational competencies. A district may apply for a waiver if an innovative plan for meeting the instructional requirement for the standard is submitted to and approved by the director of the department of education.

The instructional programs also shall comply with the provisions of Iowa Code chapter 258 relating to vocational education. Advisory committee/councils designed to assist vocational education planning and evaluation shall be composed of public members with emphasis on persons representing business, agriculture, industry, and labor. The membership of local advisory committees/councils will fairly represent each gender and minority residing in the school district. The accreditation status of a school district failing to comply with the provisions of this subrule shall be governed by 281—subrule 46.7(10), paragraph “g.”

(1) A service area is the broad category of instruction in the following occupational cluster areas (definitions are those used in these rules):

(2) “Agricultural education programs” prepare individuals for employment in agriculture-related occupations. Such programs encompass the study of applied sciences and business management principles, as they relate to agriculture. Agricultural education focuses on, but is not limited to, study in horticulture, forestry, conservation, natural resources, agricultural products and processing, production of food and fiber, aquaculture and other agricultural products, mechanics, sales and service, economics marketing, and leadership development.

(3) “Business and office education programs” prepare individuals for employment in varied occupations involving such activities as planning, organizing, directing, and controlling all business office systems and procedures. Instruction offered includes such activities as preparing, transcribing, systematizing, preserving communications; analyzing financial records; receiving and disbursing money; gathering, processing and distributing information; and performing other business and office duties.

(4) “Health occupations education programs” prepare individuals for employment in a variety of occupations concerned with providing care in the areas of wellness, prevention of disease, diagnosis, treatment, and rehabilitation. Instruction offered encompasses varied activities in such areas as dental science, medical science, diagnostic services, treatment therapy, patient care areas, rehabilitation services, record keeping, emergency care, and health education. Many occupations in this category require licensing or credentialing to practice, or to use a specific title.

(5) “Home economics education programs” encompass two categories of instructional programs:

1. “Consumer and family science” programs may be taught to prepare individuals for a multiple role of homemaker and wage earner and may include such content areas as food and nutrition; consumer education; family living and parenthood; child development and guidance; family and individual health; housing and home management; and clothing and textiles.

2. “Home economics occupations programs” prepare individuals for paid employment in such home economics-related occupations as child care aide/assistant, food production management and services, and homemaker/home health aide.

(6) “Industrial education programs” encompass two categories of instructional programs—industrial technology and trade and industrial. Industrial technology means an applied discipline designed to promote technological literacy which provides knowledge and understanding of the impact of technology including its organizations, techniques, tools, and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power and energy. Trade and industrial programs prepare individuals for employment in such areas as protective services, construction trades, mechanics and repairers, precision production, transportation, and graphic communications. Instruction includes regular systematic classroom activities, followed by experiential learning with the most important processes, tools, machines, management ideas, and impacts of technology.

(7) “Marketing education programs” prepare individuals for marketing occupations, including merchandising and management—those activities which make products and services readily available to consumers and business. Instruction stresses the concept that marketing is the bridge between production (including the creation of services and ideas) and consumption. These activities are performed by retailers, wholesalers, and businesses providing services in for-profit and not-for-profit business firms.

(8) “Sequential unit” applies to an integrated offering, directly related to the educational and occupational skills preparation of individuals for jobs and preparation for postsecondary education. Sequential units provide a logical framework for the instruction offered in a related occupational area and do not require prerequisites for enrollment. A unit is defined in subrule 12.5(18).

(9) “Competency” is a learned student performance statement which can be accurately repeated and measured. Instruction is based on incumbent worker-validated statements of learner results (competencies) which clearly describe what skills the students will be able to demonstrate as a result of the instruction. Competencies function as the basis for building the instructional program to be offered. Teacher evaluation of students, based upon their ability to perform the competencies, is an integral part of a competency-based system.

(10) “Minimum competency lists” contain competencies validated by statewide technical committees, composed of representatives from appropriate businesses, industries, agriculture, and organized labor. These lists contain essential competencies which lead to entry level employment and are not intended to be the only competencies learned. Districts will choose one set of competencies per service area upon which to build their program or follow the process detailed in 281—subrule 46.7(2) to develop local competencies.

(11) “Clinical experience” involves direct instructor supervision in the actual workplace, so that the learner has the opportunity to apply theory and to perfect skills taught in the classroom and laboratory.

“Field training” is an applied learning experience in a nonclassroom environment under the supervision of an instructor.

“Lab training” is experimentation, practice or simulation by students under the supervision of an instructor.

“On-the-job training” is a cooperative work experience planned and supervised by a teacher-coordinator and the supervisor in the employment setting.

(12) “Coring” is an instructional design whereby competencies common to two or more different vocational service areas are taught as one course offering. Courses shall be no longer than one unit of instruction. Course(s) may be placed wherever appropriate within the program offered. This offering may be acceptable as a unit or partial unit in more than one vocational program to meet the standard.

(13) “Articulation” is the process of mutually agreeing upon competencies and performance levels transferable between institutions and programs for advanced placement or credit in a vocational program. An articulation agreement is the written document which explains the decisions agreed upon and the process used by the institution to grant advanced placement or credit.

(14) “Multioccupational courses” combine on-the-job training in any of the occupational areas with the related classroom instruction. The instructor provides the related classroom instruction and coordinates the training with the employer at the work site. A multioccupational course may only be used to complete a sequence in more than one vocational service area if competencies from the appropriate set of minimum competencies are a part of the related instruction.

j. Vocational education/nonpublic schools (five units). A nonpublic school which provides an educational program that includes grades 9 through 12 shall offer and teach five units of occupational education subjects, which may include, but are not limited to, programs, services, and activities which prepare students for employment in business or office occupations, trade and industrial occupations, consumer and family sciences or home economics occupations, agricultural occupations, marketing occupations, and health occupations. By July 1, 1993, instruction shall be competency-based, articulated with postsecondary programs of study, and may include field, laboratory, or on-the-job training.

k. Personal finance literacy (one-half unit). All students shall complete at least one-half unit of personal finance literacy as a condition of graduation.

(1) The curriculum shall, at a minimum, address the following:

1. Savings, including emergency fund, purchases, and wealth-building.
2. Understanding investments, including compound and simple interest, liquidity, diversification, risk-return ratio, certificates of deposit, money market accounts, single stocks, bonds, mutual funds, rental real estate, annuities, commodities, and futures.

3. Wealth-building and college planning, including long-term and short-term investing using tax-favored plans, individual retirement accounts and payments from such accounts, employer-sponsored retirement plans and investments, public and private educational savings accounts, and uniform gifts and transfers to minors.

4. Credit and debt, including credit cards, payday lending, rent-to-own transactions, debt consolidation, automobile leasing, cosigning a loan, debt avoidance, and the marketing of debt, especially to young people.

5. Consumer awareness of the power of marketing on buying decisions including 0 percent interest offers; marketing methods, including product positioning, advertising, brand recognition, and personal selling; how to read a credit report and correct inaccuracies; how to build a credit score; how to develop a plan to deal with creditors and avoid bankruptcy; and the federal Fair Debt Collection Practices Act.

6. Financial responsibility and money management, including creating and living on a written budget and balancing a checkbook; basic rules of successful negotiating and techniques; and personality or other traits regarding money.

7. Insurance, risk management, income, and career decisions, including career choices that fit personality styles and occupational goals, job search strategies, cover letters, résumés, interview techniques, payroll taxes and other income withholdings, and revenue sources for federal, state, and local governments.

8. Different types of insurance coverage including renters, homeowners, automobile, health, disability, long-term care, identity theft, and life insurance; term life, cash value and whole life insurance; and insurance terms such as deductible, stop-loss, elimination period, replacement coverage, liability, and out-of-pocket.

9. Buying, selling, and renting advantages and disadvantages relating to real estate, including adjustable rate, balloon, conventional, government-backed, reverse, and seller-financed mortgages.

(2) One-half unit of personal finance literacy may count as one-half unit of social studies in meeting the requirements of paragraph 12.5(5)“b,” though the teacher providing personal finance literacy coursework that counts as one-half unit of social studies need not hold a social studies endorsement.

(3) Units of coursework that meet the requirements of any combination of coursework required under paragraph 12.5(5)“b,”“c,” or “h” and incorporate the curriculum required under subparagraph 12.5(5)“k”(1) shall be deemed to satisfy the offer-and-teach requirements of this paragraph, and a student who completes such units shall be deemed to have met the graduation requirement of this paragraph.

1. *Computer science (one-half unit).* Commencing with the school year beginning July 1, 2022, the one-half unit of computer science shall incorporate the standards established under rule 281—12.11(256) and may be offered online in accordance with 281—Chapter 15.

12.5(6) *Exemption from physical education course, health course, physical activity requirement, or cardiopulmonary resuscitation course completion.* A pupil shall not be required to enroll in a physical education course if the pupil’s parent or guardian files a written statement with the school principal that the course conflicts with the pupil’s religious beliefs. A pupil shall not be required to enroll in a health course if the pupil’s parent or guardian files a written statement with the school principal that the course conflicts with the pupil’s religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(19) regarding physical activity if the pupil’s parent or guardian files a written statement with the school principal that the requirement conflicts with the pupil’s religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(20) regarding completion of a cardiopulmonary resuscitation course if the pupil’s parent or guardian files a written statement with the school principal that the completion of such a course conflicts with the pupil’s religious beliefs.

12.5(7) *Career education.* Each school or school district shall incorporate school-to-career educational programming into its comprehensive school improvement plan. Curricular and cocurricular teaching and learning experiences regarding career education shall be provided from the prekindergarten level through grade 12. Career education shall be incorporated into the total educational program and shall include, but is not limited to, awareness of self in relation to others and the needs of society; exploration of employment opportunities, at a minimum, within Iowa; experiences in personal decision

making; experiences that help students connect work values into all aspects of their lives; and the development of employability skills. In the implementation of this subrule, the board shall comply with Iowa Code section 280.9.

12.5(8) *Multicultural and gender fair approaches to the educational program.* The board shall establish a policy to ensure that students are free from discriminatory practices in the educational program as required by Iowa Code section 256.11. In developing or revising the policy, parents, students, instructional and noninstructional staff, and community members shall be involved. Each school or school district shall incorporate multicultural and gender fair goals for the educational program into its comprehensive school improvement plan. Incorporation shall include the following:

a. Multicultural approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of diverse cultural groups, including race, color, national origin, gender, disability, religion, creed, and socioeconomic background. The contributions and perspectives of Asian Americans, African Americans, Hispanic Americans, American Indians, European Americans, and persons with disabilities shall be included in the program.

b. Gender fair approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of women and men to society. The program shall reflect the wide variety of roles open to both women and men and shall provide equal opportunity to both sexes.

12.5(9) *Special education.* The board of each school district shall provide special education programs and services for its resident children which comply with rules of the state board of education implementing Iowa Code chapters 256, 256B, 273, and 280.

12.5(10) *Technology integration.* Each school or school district shall incorporate into its comprehensive school improvement plan demonstrated use of technology to meet its student learning goals.

12.5(11) *Global education.* Each school or school district shall incorporate global education into its comprehensive school improvement plan as required by Iowa Code section 256.11. Global education shall be incorporated into all areas and levels of the educational program so students have the opportunity to acquire a realistic perspective on world issues, problems, and the relationship between an individual's self-interest and the concerns of people elsewhere in the world.

12.5(12) *Provisions for gifted and talented students.* Each school district shall incorporate gifted and talented programming into its comprehensive school improvement plan as required by Iowa Code section 257.43. The comprehensive school improvement plan shall include the following gifted and talented program provisions: valid and systematic procedures, including multiple selection criteria for identifying gifted and talented students from the total student population; goals and performance measures; a qualitatively differentiated program to meet the students' cognitive and affective needs; staffing provisions; an in-service design; a budget; and qualifications of personnel administering the program. Each school district shall review and evaluate its gifted and talented programming. This subrule does not apply to accredited nonpublic schools.

12.5(13) *Provisions for at-risk students.* Each school district shall make provision for meeting the needs of at-risk students: valid and systematic procedures and criteria to identify at-risk students throughout the school district's school-age population, determination of appropriate ongoing educational strategies for alternative options education programs as required in Iowa Code section 280.19A, and review and evaluation of the effectiveness of provisions for at-risk students. This subrule does not apply to accredited nonpublic schools.

Provisions for at-risk students shall align with the student learning goals and content standards established by the school district or by school districts participating in a consortium. The comprehensive school improvement plan shall also include objectives, activities, cooperative arrangements with other service agencies and service groups, and strategies for parental involvement to meet the needs of at-risk children.

12.5(14) *Unit.* A unit is a course which meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires

the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization; or it is an equated requirement as a part of a flexible student and school support program filed as prescribed in rule 281—12.9(256). A fractional unit shall be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit. However, the third and fourth years of a world language may be taught at the same time by one teacher in a single classroom situation, each yielding a unit of credit.

12.5(15) Credit. A student shall receive a credit or a partial credit upon successful completion of a course which meets one of the criteria in subrule 12.5(14). The board may award high school credit to a student who demonstrates required competencies for a course or content area in accordance with assessment methods approved by the local board.

12.5(16) Subject offering. Except as provided for under subrule 12.5(21), a subject shall be regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

A subject shall be regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects which the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

12.5(17) Twenty-first century learning skills. Twenty-first century learning skills include civic literacy, health literacy, technology literacy, financial literacy, and employability skills. Schools and school districts shall address the curricular needs of students in kindergarten through grade twelve in these areas. In doing so, schools and school districts shall apply to all curricular areas the universal constructs of critical thinking, complex communication, creativity, collaboration, flexibility and adaptability, and productivity and accountability.

a. Civic literacy. Components of civic literacy include rights and responsibilities of citizens; principles of democracy and republicanism; purpose and function of the three branches of government; local, state, and national government; inherent, expressed, and implied powers; strategies for effective political action; how law and public policy are established; how various political systems define rights and responsibilities of the individual; the role of the United States in current world affairs.

b. Health literacy. Components of health literacy include understanding and using basic health concepts to enhance personal, family and community health; establish and monitor health goals; effectively manage health risk situations and advocate for others; demonstrate a healthy lifestyle that benefits the individual and society.

c. Technology literacy. Components of technology literacy include creative thinking; development of innovative products and processes; support of personal learning and the learning of others; gathering, evaluating, and using information; use of appropriate tools and resources; conduct of research; project management; problem solving; informed decision making.

d. Financial literacy. Components of financial literacy include developing short- and long-term financial goals; understanding needs versus wants; spending plans and positive cash flow; informed and responsible decision making; repaying debt; risk management options; saving, investing, and asset building; understanding human, cultural, and societal issues; legal and ethical behavior.

e. Employability skills. Components of employability skills include different perspectives and cross-cultural understanding; adaptability and flexibility; ambiguity and change; leadership; integrity, ethical behavior, and social responsibility; initiative and self-direction; productivity and accountability.

12.5(18) Early intervention program. Each school district receiving early intervention program funds shall make provisions to meet the needs of kindergarten through grade 3 students. The intent of the early intervention program is to reduce class size, to achieve a higher level of student success in the basic skills, and to increase teacher-parent communication and accountability. Each school district shall develop a class size management strategy by September 15, 1999, to work toward, or to maintain, class sizes in basic skills instruction for kindergarten through grade 3 that are at the state goal of 17 students

per teacher. Each school district shall incorporate into its comprehensive school improvement plan goals and activities for kindergarten through grade 3 students to achieve a higher level of success in the basic skills, especially reading. A school district shall, at a minimum, biannually inform parents of their individual child's performance on the results of diagnostic assessments in kindergarten through grade 3. If intervention is appropriate, the school district shall inform the parents of the actions the school district intends to take to improve the child's reading skills and provide the parents with strategies to enable the parents to improve their child's skills.

12.5(19) *Physical activity requirement.* Subject to the provisions of subrule 12.5(6), physically able pupils in kindergarten through grade 5 shall engage in physical activity for a minimum of 30 minutes each school day. Subject to the provisions of subrule 12.5(6), physically able pupils in grades 6 through 12 shall engage in physical activity for a minimum of 120 minutes per week in which there are at least five days of school.

a. This requirement may be met by pupils in grades 6 through 12 by participation in the following activities including, but not limited to:

(1) Interscholastic athletics sponsored by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union;

(2) School-sponsored marching band, show choir, dance, drill, cheer, or similar activities;

(3) Nonschool gymnastics, dance, team sports, individual sports; or

(4) Similar endeavors that involve movement, manipulation, or exertion of the body.

b. When the requirement is to be met in full or in part by a pupil using one or more nonschool activities, the school or school district shall enter into a written agreement with the pupil. The agreement shall state the nature of the activity and the starting and ending dates of the activity and shall provide sufficient information about the duration of time of the activity each week. The agreement shall also be signed by the school principal or principal's designee and by at least one parent or guardian of the pupil if the pupil is a minor. The pupil shall sign the agreement, regardless of the age of the pupil. The agreement shall be effective for no longer than one school year. There is no limit to the number of agreements that a school or school district may have with any one pupil during the enrollment of the pupil.

c. In no event may a school or school district reduce the regular instructional time, as defined by "unit" in subrule 12.5(14), for any pupil to enable the pupil to meet the physical activity requirement. However, this requirement may be met by physical education classes, activities at recess or during class time, and before- or after-school activities.

d. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.

12.5(20) *Cardiopulmonary resuscitation course completion requirement.* Subject to the provisions of subrule 12.5(6), at any time prior to the end of twelfth grade, every pupil physically able to do so shall have completed a psychomotor course that leads to certification in cardiopulmonary resuscitation. A school or school district administrator may waive this requirement for any pupil who is not physically able to complete the course. A course that leads to certification in CPR may be taught during the school day by either a school or school district employee or by a volunteer, as long as the person is certified to teach a course that leads to certification in CPR. In addition, a school or school district shall accept certification from any nationally recognized course in cardiopulmonary resuscitation as evidence that this requirement has been met by a pupil. A school or school district shall not accept auditing of a CPR course, nor a course in infant CPR only. This subrule is effective for the graduating class of 2011-2012.

12.5(21) *Contracted courses used to meet school or school district requirements.* A school or school district may use contracted community college courses meeting the requirements of rule 281—22.8(261E) under the following conditions.

a. A course or courses used to meet the sequential unit requirement for career and technical education under paragraph 12.5(5) "i." One or more courses in only one of the six career and technical education service areas specified in paragraph 12.5(5) "i" may be eligible for supplementary weighting under the provisions of 281—subrule 97.2(5).

b. A course or courses comprising up to a unit of science or mathematics in accordance with paragraph 12.5(5) “*c*” or “*d*.” Such courses may be eligible for supplementary weighting under the provisions of 281—subrule 97.2(5).

c. Courses offered pursuant to paragraph 12.5(21) “*a*” or “*b*” shall be deemed to have met the requirement that the school district offer and teach such a unit under the educational standards of this rule.

d. An accredited nonpublic school may use contracted community college courses to meet offer-and-teach requirements for career and technical education and math or science established under subrule 12.5(5). Such courses may be eligible for funding under rule 281—97.8(261E).

12.5(22) Additional provisions related to the high school program.

a. Legislative page program. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall each establish a policy to award credit toward graduation to a student if the student participates in the legislative page program at the state capitol for a regular session of the general assembly. The student shall be excused from the physical education requirements of paragraph 12.5(5) “*f*,” and is exempt from the physical activity requirements of subrule 12.5(19), while participating in the legislative page program. The student must complete the graduation requirements of subrule 12.3(5) and the introductory paragraph of subrule 12.5(5), but participation in the legislative page program for a complete regular session of the general assembly shall count as one-half unit of social studies credit required for purposes of the introductory paragraph of subrule 12.5(5).

b. Junior reserve officers’ training corps. A student who is enrolled in a junior reserve officers’ training corps shall not be required to participate in physical education activities under paragraph 12.5(5) “*f*,” or to meet the physical activity requirements of subrule 12.5(19), but shall receive one-eighth unit of physical education credit for each semester, or the equivalent, of junior reserve officers’ training corps the student completes.

[ARC 7783B, IAB 5/20/09, effective 6/24/09; ARC 0016C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 0525C, IAB 12/12/12, effective 1/16/13; ARC 1116C, IAB 10/16/13, effective 11/20/13; ARC 1663C, IAB 10/15/14, effective 11/19/14; ARC 4527C, IAB 7/3/19, effective 8/7/19; ARC 4808C, IAB 12/18/19, effective 1/22/20; ARC 5325C, IAB 12/16/20, effective 1/20/21; ARC 6291C, IAB 4/20/22, effective 5/25/22]

DIVISION VI
ACTIVITY PROGRAM

281—12.6(256) Activity program. The following standards shall apply to the activity program of accredited schools and school districts.

12.6(1) General guidelines. Each board shall sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The program shall be supervised by qualified professional staff and shall be designed to meet the needs and interests and challenge the abilities of all pupils consistent with their individual stages of development; contribute to the physical, mental, athletic, civic, social, moral, and emotional growth of all pupils; offer opportunities for both individual and group activities; be integrated with the instructional program; and provide balance so a limited number of activities will not be perpetuated at the expense of others.

12.6(2) Supervised intramural sports. If the board sponsors a voluntary program of supervised intramural sports for pupils in grades seven through twelve, qualified personnel and adequate facilities, equipment, and supplies shall be provided. Middle school grades below grade seven may also participate.

DIVISION VII
STAFF DEVELOPMENT

281—12.7(256,284,284A) Professional development. The following standards shall apply to staff development for accredited schools and school districts.

12.7(1) Provisions for school district professional development.

a. Provisions for district professional development plans. Each school district shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff,

including the district professional development plan required in 281—paragraph 83.6(2)“a.” To meet the professional needs of all staff, professional development activities shall align with district goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender fair approaches to the educational program; and shall adhere to the professional development standards in 281—paragraph 83.6(2)“b” to realize increased student achievement, learning, and performance as set forth in the comprehensive school improvement plan.

b. Provisions for attendance center professional development plans. Each school district shall ensure that every attendance center has an attendance center professional development plan that addresses, at a minimum, the needs of the teachers in that center; the Iowa teaching standards; the district professional development plan; and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

c. Provisions for individual teacher professional development plans. Each school district shall ensure that every teacher as defined in rule 281—83.2(284,284A) has an individual teacher professional development plan that meets the expectations in 281—subrule 83.6(1).

d. Budget for staff development. The board shall annually budget specified funds to implement the plan required in paragraph 12.7(1)“a.”

12.7(2) Provisions for accredited nonpublic school professional development.

a. Each accredited nonpublic school shall incorporate into its comprehensive school improvement plan provisions for the professional development of staff. To meet the professional needs of instructional staff, professional development activities shall align with school achievement goals and shall be based on student achievement needs and staff professional development needs. The plan shall deliver research-based instructional practices to realize increased student achievement, learning, and performance as set forth in the comprehensive school improvement plan.

b. Budget for staff development. The board shall annually budget specified funds to implement the plan required in paragraph 12.7(2)“a.”

DIVISION VIII
ACCOUNTABILITY

281—12.8(256) Accountability for student achievement. Schools and school districts shall meet the following accountability requirements for increased student achievement. Area education agencies shall provide technical assistance as required by 281—subrule 72.4(7).

12.8(1) Comprehensive school improvement. The general accreditation standards are minimum, uniform requirements. However, the department encourages schools and school districts to go beyond the minimum with their work toward ongoing improvement. As a means to this end, local comprehensive school improvement plans shall be specific to a school or school district and designed, at a minimum, to increase the learning, achievement, and performance of all students.

As a part of ongoing improvement in its educational system, the board shall adopt a written comprehensive school improvement plan designed for continuous school, parental, and community involvement in the development and monitoring of a plan that is aligned with school or school district determined needs. The plan shall incorporate, to the extent possible, the consolidation of federal and state planning, goal setting, and reporting requirements. The plan shall contain, but is not limited to, the following components:

a. Community involvement.

(1) Local community. The school or school district shall involve the local community in decision-making processes as appropriate. The school or school district shall seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(2) as amended by 2007 Iowa Acts, Senate File 61, section 1, the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, the committee shall make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals;
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement; and
4. Harassment or bullying prevention goals, programs, training, and other initiatives.

(3) At least annually, the school improvement advisory committee shall also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);
2. Progress achieved with other locally determined core indicators; and
3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board shall adopt a policy for conducting ongoing and long-range needs assessment processes. This policy shall ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy shall include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators within the comprehensive school improvement plan as required by Iowa Code section 280.12, and the methods a school district will use to inform kindergarten through grade 3 parents of their individual child's performance biannually as described in 1999 Iowa Acts, House File 743. The policy shall describe how the school or school district shall provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process shall include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process shall include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;
2. Locally established student learning goals; and
3. Specific data collection required by federal and state programs.

Schools and school districts shall also collect information about additional factors influencing student achievement which may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, shall adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process shall include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, shall adopt annual improvement goals based on data from at least one districtwide assessment. The goals shall describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule 12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board shall adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy shall describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Included in the local standards and benchmarks shall be the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act. Standards and benchmarks may be adopted for other curriculum areas defined in 281—Chapter 12, Division V. The comprehensive school improvement plan submitted to the department shall contain, at a minimum, the core content standards for reading, mathematics, and science. The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology integration, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), and 12.5(11), and subparagraph 12.8(1)“c”(1).

d. Determination and implementation of actions to meet the needs. The comprehensive school improvement plan shall include actions the school or school district shall take districtwide in order to accomplish its long-range and annual improvement goals as required in Iowa Code section 280.12(1)“b.”

(1) Actions shall include, but are not limited to, addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18).

(2) A school or school district shall document consolidation of state and federal resources and requirements, as appropriate, to implement the actions in its comprehensive school improvement plan. State and federal resources shall be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans, aligned with its comprehensive school improvement plan. These may be included in the comprehensive school improvement plan or kept on file at the local level.

e. Evaluation of the comprehensive school improvement plan. A school or school district shall develop strategies to collect data and information to determine if the plan has accomplished the goals for which it was established.

f. Assessment of student progress. Each school or school district shall include in its comprehensive school improvement plan provisions for districtwide assessment of student progress for all students. The plan shall identify valid and reliable student assessments aligned with local content standards, which include the core content standards referenced in subparagraph 12.8(1)“c”(2). These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) shall provide for diagnostic reading assessments for kindergarten through grade 3 students.

(1) State indicators. Using at least one districtwide assessment, a school or school district shall assess student progress on the state indicators in, but not limited to, reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment shall allow for, but not be limited to, the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science.

(2) Performance levels. A school or school district shall establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 10 or use the achievement levels as established by the Iowa Testing Program to meet the intent of this subparagraph (2).

g. Assurances and support. A school or school district shall provide evidence that its board has approved and supports the five-year comprehensive school improvement plan and any future revisions of that plan. This assurance includes the commitment for ongoing improvement of the educational system.

h. Statewide summative assessment.

(1) For purposes of this chapter, the statewide summative assessment of student progress administered by school districts for purposes of the core academic indicators shall be the summative assessment developed by the Iowa testing program within the University of Iowa college of education and administered by the Iowa testing program's designee. The department may require the Iowa testing program to enter into agreements with such designee to ensure the department is able to comply with Iowa Code chapter 256; this chapter; the requirements of the federal Every Student Succeeds Act, Pub. L. No. 114-95; the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; and any other applicable state or federal law.

(2) For the school year beginning July 1, 2018, and each succeeding school year, the statewide summative assessment referred in this paragraph shall meet all of the following requirements:

1. All students enrolled in school districts in grades 3 through 11 shall be administered an assessment in mathematics and English language arts, including reading and writing, during the last quarter of the school year, and all students enrolled in school districts in grades 5, 8, and 10 shall be administered an assessment in science during the last quarter of the school year.

2. The assessment, at a minimum, shall assess the core academic indicators identified in Iowa Code section 256.7(21) "b"; be aligned with the Iowa common core standards in both content and rigor; accurately describe student achievement and growth for purposes of the school, the school district, and state accountability systems; provide valid, reliable, and fair measures of student progress toward college or career readiness; and meet the summative assessment requirements of the federal Every Student Succeeds Act, Pub. L. No. 114-95.

3. The assessment shall be available for administration in both paper-and-pencil and computer-based formats and include assessments in mathematics, science, and English language arts, including reading and writing.

4. The assessment shall be peer-reviewed by an independent third-party evaluator to determine that the assessment is aligned with the Iowa core academic standards, provides a measurement of student growth and student proficiency, and meets the summative assessment requirements of the federal Every Student Succeeds Act, Pub. L. No. 114-95. The assessment developed by the Iowa testing service within the University of Iowa college of education shall make any necessary adjustments as determined by the peer review to meet the requirements of this paragraph.

5. The costs of complying with the requirement of this paragraph shall be borne by the Iowa testing program within the University of Iowa college of education.

12.8(2) *Submission of a comprehensive school improvement plan.* A school or school district shall submit to the department and respective area education agency a multiyear comprehensive school improvement plan on or before September 15, 2000. Beginning July 1, 2001, a school or school district shall submit a revised five-year comprehensive school improvement plan by September 15 of the school year following the comprehensive site visit specified in Iowa Code section 256.11 which incorporates, when appropriate, areas of improvement noted pursuant to subrule 12.8(4). A school or school district may, at any time, file a revised comprehensive school improvement plan with the department and respective area education agency.

12.8(3) *Annual reporting requirements.* A school or school district shall, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district shall collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(3) The percentage of all eighth and tenth grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, students with disabilities, and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district shall submit an annual progress report to its local community, its respective area education agency, and the department. That report shall be submitted to the department by September 15, 2000, and by September 15 every year thereafter. The report shall include, but not be limited to, the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district shall compare the annual data collected with the baseline data. A school or school district is not required to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district shall report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this requirement.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading and mathematics by September 15, 2001, and for science by September 15, 2003.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) Progress with the use of technology as required by Iowa Code section 295.3. This requirement does not apply to accredited nonpublic schools.

(8) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds shall report to the department the progress toward achieving their early intervention goals.

(9) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(4) Accreditation, monitoring, and enforcement. The state board shall establish, and the department shall use, for the school year commencing July 1, 2021, and each succeeding school year, an accreditation, monitoring, and enforcement process for school districts and nonpublic schools seeking accreditation pursuant to this chapter. The process established shall include all of the following requirements.

a. Phase I monitoring.

(1) Phase I monitoring shall consist of annual monitoring by the department of all accredited schools and school districts for compliance with state and federal school laws, regulations, and rules adopted by the state board under Iowa Code chapter 17A, including but not limited to the following:

1. Accreditation standards adopted by the state board as provided in this chapter.
2. Fiscal compliance.

3. Federal education laws including but not limited to the federal Elementary and Secondary Education Act of 1965, and the federal Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., as amended.

4. The federal Civil Rights Act of 1964 and Iowa Code chapter 216.

5. All other requirements of this chapter applicable to accredited schools and school districts.

(2) Phase I monitoring may include but shall not be limited to the following:

1. One or more desk audits requiring submission of information to the department in a manner and on forms prescribed by the department.

2. One or more remote or on-site visits to schools or school districts to address accreditation issues identified in a desk audit. Such a visit may be conducted by an individual departmental consultant or may be a comprehensive site visit by a team of departmental consultants and other subject-matter professionals.

3. A review of district finances by department staff or a neutral third party.

4. A review of local school board policies and procedures by department staff or a neutral third party.

(3) The department shall provide a public report annually of findings of noncompliance and required corrective actions for each accredited school and school district. The purpose of the phase I process is to bring schools and school districts into minimum compliance with federal and state laws, regulations, and rules, and no citation or corrective action may be designed to require more than minimum compliance.

(4) The department shall provide a written report annually to the state board of any monitoring review resulting in multiple or substantial findings of noncompliance or noncompliance findings that remain uncorrected for more than 30 days past the deadline set by the department for correction.

(5) The department shall eliminate duplicative reporting on the part of schools and school districts for phase I monitoring, and is prohibited from collecting information not specifically permitted by federal or state law, regulation, or rule.

(6) Enforcement actions under phase I monitoring are limited to actions permitted pursuant to subparagraphs 12.8(4)“c”(2) and 12.8(4)“c”(3). Violations of federal legal requirements shall follow the procedures and limitations of the governing federal statute and regulations.

b. Phase II monitoring.

(1) Phase II monitoring shall take place when any of the following conditions are present:

1. When either the annual monitoring or the biennial on-site visit of phase I indicates that an accredited school or school district is deficient and fails to be in compliance with accreditation standards.

2. In response to a petition filed with the director requesting such an accreditation committee visitation that is signed by eligible electors residing in the school district equal in number to at least 20 percent of the registered voters of the school district.

3. In response to a petition filed with the director requesting such an accreditation committee visitation that is signed by 20 percent or more of the parents or guardians who have children enrolled in the school or school district.

4. At the direction of the state board.

5. When the school budget review committee submits to the department a recommendation for a fiscal review pursuant to Iowa Code section 257.31(18).

(2) Phase II monitoring shall consist of a full desk audit of all monitoring requirements and an on-site visit to the school or school district for the purpose of determining the extent of noncompliance; the reason for lack of correction, if applicable; and a recommendation for corrective action to the director and the state board.

(3) Phase II monitoring requires the use of an accreditation committee appointed by the director. The accreditation committee shall be made up primarily of department staff but may request the assistance of third-party specialists at the discretion of the director. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the school district or nonpublic school being visited.

(4) After visiting the school district or nonpublic school, the accreditation committee shall, within 30 days, determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation on what enforcement actions, if any, should be recommended to the state board.

c. Enforcement.

(1) The department shall enforce the laws, regulations, and rules applicable to school districts and nonpublic schools consistent with the process outlined in this subrule. The department shall coordinate its enforcement of Iowa Code chapter 216 with the Iowa state civil rights commission to reduce duplication of efforts.

(2) If, after having an opportunity to correct, if permitted, a school district is found to be in noncompliance with federal education laws including but not limited to the federal Elementary and Secondary Education Act of 1965; the federal Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., as amended; the federal Civil Rights Act of 1964; or Iowa Code chapter 216; or Iowa Code section 279.73 or 279.74, the director shall recommend, and the state board may do, one of the following within 30 days of the finding of noncompliance:

1. Impose conditions on funding provided to a school district, including directing the use of school district funds and designating the school district a high-risk grantee under 2 CFR §200.207.

2. Withhold payment of state or federal funds to a school district, in whole or in part, until noncompliance is corrected. Initial withholding of state funds is at the discretion of the director for a period of 60 calendar days, after which it is subject to approval of the state board every 60 calendar days. Withholding of federal funds is subject to the governing federal statute or regulation.

(3) The director may use any of the following permitted enforcement mechanisms and shall exercise discretion to ensure that enforcement actions are proportionate to school district or nonpublic school noncompliance:

1. Advise the school district or nonpublic school on the availability of appropriate technical assistance.

2. Require the school district or nonpublic school to complete a corrective action plan or plan for improvement by a reasonable deadline.

3. Recommend a phase II visit to the school district or nonpublic school to the state board.

4. Refer conduct of school district or nonpublic school staff or school board members, or school authorities, to the office of the attorney general for investigation.

5. Refer financial concerns to the auditor of state for investigation.

6. Recommend removal of accreditation of the school district or school to the state board.

7. Take any other enforcement mechanism available to the director.

(4) The department shall focus enforcement activities on all of the following:

1. Improving educational results for children, families, and students.

2. Ensuring that public agencies and their governing boards meet requirements of state and federal laws.

12.8(5) Loss of accreditation.

a. If the recommendation pursuant to subrule 12.8(4) is that a school district or nonpublic school not remain accredited, the accreditation committee shall provide the school district or nonpublic school with a report that includes a list of all of the deficiencies, a plan prescribing the actions that must be taken to correct the deficiencies, and a deadline date for completion of the prescribed actions. The accreditation committee shall advise the school district or nonpublic school of available resources and technical assistance to improve areas of weakness. The school district or nonpublic school shall be provided with the opportunity to respond to the accreditation committee's report. The director shall review the accreditation committee's report and the response of the school district or nonpublic school and shall provide a report to the state board along with copies of the accreditation committee's report, the response to the accreditation committee's report, and other pertinent information. At the request of the school district or nonpublic school, the school district or nonpublic school may appear before the state board and address the state board directly regarding any part of the plan specified in the report. The

state board may modify the plan. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school district or school shall remain accredited.

b. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected.

c. The accreditation team shall make a report and recommendation to the director and the state board. The committee recommendation shall specify whether the school district or nonpublic school shall remain accredited. For a school district, the committee report and recommendation shall also specify under what conditions the district may remain accredited. The conditions may include but are not limited to providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district in order to bring the school district into compliance with minimum standards.

d. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected.

e. If the deficiencies have not been corrected, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the state board and the local board, the state board shall deaccredit the school district and merge the territory of the school district with one or more contiguous school districts at the end of the school year. The state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the area education agency in which the district is located. The decision of whether to deaccredit the school district or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teachers, administrators, and school district board members and upon the recommendations of the accreditation committee and the director.

f. In the case of a nonpublic school, if the deficiencies have not been corrected, the state board may deaccredit the nonpublic school. The deaccreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is deaccredited.

[ARC 2312C, IAB 12/9/15, effective 1/13/16; see Delay note at end of chapter; ARC 3980C, IAB 8/29/18, effective 10/3/18; ARC 4527C, IAB 7/3/19, effective 8/7/19; ARC 6291C, IAB 4/20/22, effective 5/25/22]

DIVISION IX
FLEXIBLE STUDENT AND SCHOOL SUPPORT PROGRAM PROCESS

281—12.9(256) Flexible student and school support program.

12.9(1) *General.* The state board shall establish a flexible student and school support program to be administered by the director. Under the program, upon request of the board of directors of a public school district or the authorities in charge of an accredited nonpublic school, the director may, for a period not to exceed three years, grant the applicable board of directors or the authority in charge of the nonpublic school the ability to use the flexible student and school support program to implement evidence-based practices in innovative ways to enhance student learning, well-being, and postsecondary success.

12.9(2) *Exemptions available.* Approval to participate in the flexible student and school support program shall exempt the school district or nonpublic school from one or more of the requirements of the educational program specified in subrule 12.5(3), 12.5(4), 12.5(5), 12.5(12), 12.5(13), 12.5(19), or 12.5(20), or the minimum school calendar requirements in subrule 12.1(7). An exemption shall be granted only if the director deems that the request made is an essential part of an educational program to support student learning, well-being, and postsecondary success; is necessary for the success of the program; and is broadly consistent with the intent of the requirements of the educational program specified in subrule 12.5(3), 12.5(4), 12.5(5), 12.5(12), 12.5(13), 12.5(19), or 12.5(20), or the minimum school calendar requirements in subrule 12.1(7).

12.9(3) *Use of funds.* Approval to participate in the flexible student and school support program shall include authority for a school district to use funds from the school district's flexibility account under Iowa Code section 298A.2(2) to implement all or part of the flexible student and school support program.

12.9(4) Application. The application for the flexible student and school support program shall include all of the following and be submitted on forms and in a format prescribed by the department:

a. A description of the proposed educational program, including evidence used to design the program and evidence of involvement of board members, parents, students, community members, and staff in development of the program.

b. Program goals and measures of program effectiveness and success, including student success and performance.

c. A plan for program administration, including the use of personnel, facilities, and funding.

d. A plan for evaluation of the proposed program on at least an annual basis, including a plan for program revisions, if necessary.

e. The estimated financial impact of the program on the school district or nonpublic school.

12.9(5) Exemptions not available. Approval to participate in the program does not exempt the school district or nonpublic school from federal law or any other requirements of state law that are not specifically exempted by the director.

12.9(6) Annual report to the department. Each school district or nonpublic school approved to participate in the flexible student and school support program shall file an annual report with the department on the status of the program on forms and in a format prescribed by the department.

12.9(7) Renewal. Participation in the flexible student and school support program may be renewed for additional periods of years, each not to exceed three years. The director may revoke approval of all or part of any application or approved education program if the annual report or any other information available to the department indicates that conditions no longer warrant use of an exemption or funding from the school district's flexibility account under Iowa Code section 298A.2(2). Notice of revocation must be provided by the director to the school district or nonpublic school prior to the beginning of the school year for which participation is revoked.

[ARC 6291C, IAB 4/20/22, effective 5/25/22]

DIVISION X
INDEPENDENT ACCREDITING AGENCIES

281—12.10(256) Independent accrediting agencies. Notwithstanding subsections 1 through 12 of Iowa Code section 256.11 and this chapter, a nonpublic school may be accredited by an independent accrediting agency that appears on a list maintained by the state board of education instead of being accredited by the state board.

12.10(1) Compliance required by a nonpublic school. A nonpublic school that participates in the accreditation process offered by an independent accrediting agency on the approved list published pursuant to this rule shall be deemed to meet the education standards of Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, and this chapter. However, such a school shall comply with statutory health and safety requirements for school facilities. A nonpublic school accredited under this chapter shall abide by all state and federal laws and regulations. Notwithstanding Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(2) Compliance required by accrediting agency. Agencies approved under subrule 12.10(3) shall abide by all state and federal laws and regulations and shall enforce those laws and regulations on the schools they accredit. Notwithstanding Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(3) List maintained by state board. The state board shall maintain a list of approved independent accrediting agencies comprised of at least six regional or national nonprofit, nongovernmental agencies recognized as reliable authorities concerning the quality of education offered by a school and shall publish the list of independent accrediting agencies on the department's Internet site. The list shall include accrediting agencies that, as of January 1, 2013, accredited a nonpublic school in this state that was concurrently accredited under this rule and shall include any agency that has a formalized partnership agreement with another agency on the list and has member schools in

this state as of January 1, 2013. Agencies that met this standard as of November 20, 2013, are the Independent Schools Association of the Central States (ISACS), Christian Schools International (CSI), Cognia, the National Lutheran Schools Association (NLSA), and the Association of Christian Schools International (ASCI).

12.10(4) *Criteria for recognizing an agency as a “reliable authority concerning the quality of education offered by a school.”* In any decision to add an agency to the list maintained pursuant to subrule 12.10(1) or to remove an agency from the list pursuant to subrule 12.10(3), the following criteria may be applied:

a. Whether the agency’s accreditation standards require a school to set high academic and nonacademic standards for all students, including preparation of students for postsecondary success.

b. Whether the agency’s accreditation standards require a school to monitor and assess all students’ progress toward high academic and nonacademic standards.

c. Whether the agency’s accreditation standards require a school to recruit and retain properly licensed quality professional staff, and provide those staff members with ongoing professional development.

d. Whether the agency’s accreditation standards set requirements for fiscal, data, and contract management.

e. Whether the agency monitors compliance with its standards and takes appropriate corrective action when standards are not met.

f. Whether the agency itself has appropriate fiscal, data, and contract management policies and procedures.

g. Any uncorrected citation of noncompliance by any governmental or nongovernmental agency or organization with jurisdiction or oversight of an accrediting agency listed pursuant to subrule 12.10(1).

h. Any uncorrected negative audit finding of an accrediting agency listed pursuant to subrule 12.10(1).

i. Any judgments, orders, decrees, consent decrees, settlement agreements, or verdicts concerning the agency listed pursuant to subrule 12.10(1) entered by any state or federal court of competent jurisdiction.

j. Whether the agency listed pursuant to subrule 12.10(1) continues to retain its nonprofit status.

k. Whether the agency listed pursuant to subrule 12.10(1) has received any form of recognition for innovation or excellence concerning its work.

l. Any other criterion used by the agency to determine accreditation.

m. Any other reports or findings sent to the nonpublic school regarding accreditation, including findings related to Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89.

12.10(5) *Removal of agency from approved independent accrediting agencies.* If the state board takes preliminary action to remove an agency from the approved list published on the department’s Internet site pursuant to subrule 12.10(1), the department shall, at least one year prior to removing the agency from the approved list, notify the nonpublic schools participating in the accreditation process offered by the agency of the state board’s intent to remove the accrediting agency from its approved list of independent accrediting agencies. The department shall give notice to the independent accrediting agency, along with an opportunity to respond. The notice shall also be posted on the department’s Internet site and shall contain the proposed date of removal. If a nonpublic school receives notice pursuant to this subrule and it chooses to remain accredited, the nonpublic school shall attain accreditation under this rule or otherwise attain accreditation in a manner provided by this chapter or Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, not later than one year following the date on which the state board removes the agency from its list of independent accrediting agencies.

12.10(6) *Rule of construction: “at least six.”* The obligation to maintain a list of at least six agencies in subrule 12.10(1) shall not be construed to require the list to contain an agency that is not a regional or national nonprofit, nongovernmental agency recognized as a reliable authority concerning the quality of education offered by a school.

12.10(7) Adoption by the department of standard procedures. The department shall adopt standard procedures, schedules, and forms for the implementation of this rule, including procedures for adding independent accrediting agencies from the list maintained by the state board pursuant to subrule 12.10(1) and removing agencies from that list pursuant to subrule 12.10(3).

[ARC 1118C, IAB 10/16/13, effective 11/20/13; ARC 5333C, IAB 12/16/20, effective 1/20/21; Editorial change: IAC Supplement 2/8/23]

DIVISION XI
HIGH-QUALITY STANDARDS FOR COMPUTER SCIENCE

281—12.11(256) High-quality standards for computer science. It is the goal of the state board of education that every school district and every accredited nonpublic school shall offer instruction in high-quality computer science for elementary, middle school, and high school students by July 1, 2019.

12.11(1) Alignment with learning framework or standards developed by a nationally recognized computer science education organization or organizations. Beginning with the school year which begins July 1, 2018, and each school year thereafter, instruction in high-quality computer science shall reflect an alignment with a framework or learning standards developed by a nationally recognized computer science education organization or organizations. The department shall make available to school districts and accredited nonpublic schools such a framework or learning standards.

12.11(2) Professional development incentive fund. A computer science professional development incentive fund is established in the state treasury under the control of the department. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal moneys, for deposit in the fund. The department may disburse moneys contained in the fund for professional development activities or tuition reimbursement. Notwithstanding Iowa Code section 8.33, moneys in the computer science professional development incentive fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year. The department may disburse those moneys in the following ways.

a. A school district or accredited nonpublic school, or a collaborative of one or more school districts, accredited nonpublic schools, and area education agencies, may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide proven professional development activities for Iowa teachers in the area of computer science education.

b. A school district or accredited nonpublic school may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide tuition reimbursement for Iowa teachers seeking endorsements or authorizations for computer science under Iowa Code section 272.2(20).

12.11(3) Applicability of rules. Until July 1, 2021, subrule 12.11(1) shall only apply to school districts and accredited nonpublic schools receiving moneys from the computer science professional development incentive fund established in Iowa Code section 284.6A and described in subrule 12.11(2).

12.11(4) Computer science plan. The board of directors of each public school district and the authorities in charge of each nonpublic school shall develop and implement a kindergarten through grade 12 computer science plan by July 1, 2022, which incorporates the standards established under subrule 12.11(1), and the minimum educational standards relating to computer science contained in subrules 12.5(3) and 12.5(4) and paragraph 12.5(5)“l.”

[ARC 3765C, IAB 4/25/18, effective 5/30/18; ARC 5325C, IAB 12/16/20, effective 1/20/21]

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

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 [Filed ARC 1118C (Notice ARC 0964C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
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 [Filed ARC 3980C (Notice ARC 3822C, IAB 6/6/18), IAB 8/29/18, effective 10/3/18]
 [Filed ARC 4527C (Notice ARC 4402C, IAB 4/24/19), IAB 7/3/19, effective 8/7/19]
 [Filed ARC 4808C (Notice ARC 4682C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]
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 [Editorial change: IAC Supplement 2/8/23]

[◇] Two or more ARCs

¹ Effective date of Chapter 4 delayed 70 days by Administrative Rules Review Committee at its meeting held April 20, 1988.

² March 28, 2012, effective date of 12.3(3), 12.4(6), 12.4(14), 12.5(4)“l,” and 12.5(17) delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

³ January 13, 2016, effective date of ARC 2312C [12.8(1)“h”] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held January 8, 2016.

EDUCATIONAL EXAMINERS BOARD[282]

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CHAPTER 13
ISSUANCE OF TEACHER LICENSES AND ENDORSEMENTS

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

282—13.1(272) All applicants desiring Iowa licensure.

13.1(1) Definitions.

“*Coursework*” means requirements completed for semester hour credit through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“*Degree*” means a specific qualification earned by a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“*State-approved*” means a program for teacher preparation approved for state licensure.

13.1(2) Licenses, authorizations, certificates, and statements of professional recognition. Licenses, authorizations, certificates, and statements of professional recognition are issued upon application filed on a form provided by the board of educational examiners and upon completion of the following:

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

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

c. Registries and records check. A check of the following registries and records will be conducted on initial applicants: the sex offender registry under Iowa Code section 692A.121, the central registry for child abuse information established under Iowa Code chapter 235A, the central registry for dependent adult abuse information maintained under Iowa Code chapter 235B, and the information in the Iowa court information system available to the general public. The fee for checks of these registries and records will be assessed to the applicant.

13.1(3) Temporary permits. The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check and registries and records check set forth in paragraphs 13.1(2) “*b*” and “*c*.” The temporary permit shall serve as evidence of the applicant’s authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

[ARC 0563C, IAB 1/23/13, effective 1/1/13; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—13.2(272) Applicants from recognized Iowa institutions. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

282—13.3(272) Applicants from non-Iowa institutions. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

282—13.4(272) Applicants from foreign institutions. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

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

13.5(1) General requirements. The applicant shall:

a. Have a baccalaureate degree.

- b. Have completed a state-approved teacher education program.
- c. Have completed the teacher preparation coursework set forth in 281—subrules 79.15(2) to 79.15(5).
- d. Have completed student teaching in the subject area and grade level endorsement desired.
- e. Have completed the requirements for one of the basic teaching endorsements.
- f. Provide a recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed.

13.5(2) Applicants from non-Iowa institutions.

a. Original application. Applicants under this subrule have completed a teacher preparation program outside the state of Iowa and are applying for their first Iowa teaching license. An applicant from a non-Iowa institution:

- (1) Shall submit a copy of a valid or expired regular teaching certificate or license exclusive of a temporary, emergency or substitute license or certificate. Endorsements shall be granted based on comparable Iowa endorsements, and endorsement requirements may be waived in order to grant the most comparable endorsement.
- (2) Shall provide verification of successfully passing the mandated assessment(s) in the state in which the applicant is currently licensed, if applicable.
- (3) Shall not be subject to any pending disciplinary proceedings in any state or country.
- (4) Shall comply with all requirements with regard to application processes and payment of licensure fees.

b. Holders of an Iowa regional exchange license issued prior to June 16, 2022, may submit a new application if the requirements in this subrule would have been met at the time of their initial application.

13.5(3) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution must additionally obtain a course-by-course credential evaluation report completed by one of the board-approved credential evaluation services and then file this report with the Iowa board of educational examiners for a determination of eligibility for licensure. After receiving the notification of eligibility by the Iowa board of educational examiners, the applicant must provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education. If the applicant submits a teaching credential from another country or a credential evaluation report that verifies the completion of a full teacher preparation program from an accredited institution, the testing requirement may be waived.

[ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2584C, IAB 6/22/16, effective 7/27/16; ARC 3829C, IAB 6/6/18, effective 7/11/18; ARC 5321C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6245C, IAB 3/23/22, effective 4/27/22; ARC 6867C, IAB 2/8/23, effective 3/15/23; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—13.6(272) Specific requirements for an initial license. An initial license valid for a minimum of two years with an expiration date of June 30 may be issued to an applicant who meets the general requirements set forth in rule 282—13.5(272).

[ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 3979C, IAB 8/29/18, effective 10/3/18; ARC 4621C, IAB 8/28/19, effective 8/7/19; ARC 6870C, IAB 2/8/23, effective 3/15/23]

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

- 1. Meets the general requirements set forth in rule 282—13.5(272), and
- 2. Shows evidence of successful completion of a state-approved mentoring and induction program or mentoring through a state-approved career, leadership, and compensation framework by meeting the Iowa teaching standards as determined by a comprehensive evaluation and two years' successful teaching experience within the applicant's approved endorsement area(s). In lieu of completion of an Iowa state-approved mentoring program, the applicant must provide evidence of three years' successful teaching experience within the applicant's approved endorsement area(s) at any of the following:
 - An accredited nonpublic school in this state.
 - A preschool program approved by the United States Department of Health and Human Services.

- Preschool programs at school districts approved to participate in the preschool program under Iowa Code chapter 256C.
- Shared visions programs receiving grants from the child development coordinating council under Iowa Code section 256A.3.
- Preschool programs receiving moneys from the school ready children grants account of the early childhood Iowa fund created in Iowa Code section 256I.11.
- An out-of-state PK-12 educational setting.

[ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2792C, IAB 11/9/16, effective 12/14/16; ARC 3634C, IAB 2/14/18, effective 3/21/18]

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

1. Is the holder of or is eligible for a standard license as set out in rule 282—13.7(272), and
2. Verifies five years of successful teaching experience, and
3. Completes one of the following options:
 - Master’s degree in a recognized endorsement area, or
 - Master’s degree in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction.

[ARC 1168C, IAB 11/13/13, effective 12/18/13; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—13.9(272) Teacher intern license.

13.9(1) Authorization. The teacher intern is authorized to teach within qualified endorsement areas approved by the Iowa department of education for teacher internships.

13.9(2) Term. The term of the teacher intern license will be one school year. This license is nonrenewable.

13.9(3) Teacher intern requirements. A teacher intern license and endorsement may be issued to an applicant who has been recommended by an institution with a state-approved intern program and who has met the background check requirements set forth in rule 282—13.1(272).

13.9(4) Requirements to convert the teacher intern license to the initial license. An initial license shall be issued upon application provided that the teacher intern has met the requirements as verified by the recommendation from the state-approved program.

13.9(5) Requirements to extend the teacher intern license if the teacher intern does not complete all of the education coursework during the term of the teacher intern license.

a. A one-year extension of the teacher intern license may be issued upon application provided that the teacher intern has met both of the following requirements:

- (1) Successful completion of one year of teaching experience during the teacher internship.
- (2) Verification by the recommending official at the approved teacher intern program that the teacher intern has not completed all of the coursework required for the initial license.

b. Only one year of teaching experience during the term of the teacher intern license or the extension of a teacher intern license may be used to convert the teacher intern license to a standard teaching license.

[ARC 8688B, IAB 4/7/10, effective 5/12/10; ARC 9925B, IAB 12/14/11, effective 1/18/12; ARC 0698C, IAB 5/1/13, effective 6/5/13; ARC 0865C, IAB 7/24/13, effective 8/28/13; ARC 1374C, IAB 3/19/14, effective 4/23/14; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 6245C, IAB 3/23/22, effective 4/27/22]

282—13.10(272) Specific requirements for a Class A extension license. A nonrenewable Class A extension license valid for one year may be issued to an individual under one of the following conditions:

13.10(1) Based on an expired Iowa certificate or license, exclusive of a Class A extension or Class B license.

a. The holder of an expired license, exclusive of a Class A extension or Class B license, shall be eligible to receive a Class A extension license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

b. The holder of an expired license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the

renewal requirements for the license held shall be required to secure the signature of the superintendent or designee before the license will be issued.

13.10(2) *Based on a mentoring and induction program.* An applicant may be eligible for a Class A extension license if the school district, after conducting a comprehensive evaluation, recommends and verifies that the applicant shall participate in the mentoring program for a third year. No further extensions are available for this type of Class A extension license.

[ARC 7987B, IAB 7/29/09, effective 9/2/09; ARC 8134B, IAB 9/9/09, effective 10/14/09; ARC 8957B, IAB 7/28/10, effective 9/1/10; ARC 2016C, IAB 6/10/15, effective 7/15/15]

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

13.11(1) *Endorsement in progress.* The individual has a valid initial, standard, master educator, permanent professional, Class A extension, exchange, or professional service license and one or more endorsements but is seeking to obtain some other endorsement. A Class B license may be issued if requested by an employer and if the individual seeking to obtain some other endorsement has completed at least one-half of the content requirements leading to completion of all requirements for the endorsement. A Class B license may not be issued for the driver's education endorsement.

13.11(2) *Program of study.* The college or university must outline the program of study necessary to meet the endorsement requirements for specified areas. This program of study must be attached to the application.

13.11(3) *Request for executive director decision.* If the minimum content requirements have not been met for the Class B license, a one-year executive director decision license may be issued if requested by the school district and if the school district can demonstrate that a candidate with the proper endorsement was not found after a diligent search. The executive director decision license may not be renewed and will expire on June 30 of the fiscal year in which it was issued.

13.11(4) *Expiration.* The Class B license will expire on June 30 of the fiscal year in which it was issued plus one year.

[ARC 7987B, IAB 7/29/09, effective 9/2/09; ARC 8133B, IAB 9/9/09, effective 10/14/09; ARC 9207B, IAB 11/3/10, effective 12/8/10; ARC 9573B, IAB 6/29/11, effective 8/3/11; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 6245C, IAB 3/23/22, effective 4/27/22]

282—13.12(272) Specific requirements for a Class C license. Rescinded IAB 7/29/09, effective 9/2/09.

282—13.13(272) Specific requirements for a Class D occupational license. Rescinded IAB 7/29/09, effective 9/2/09.

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

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

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

[ARC 7987B, IAB 7/29/09, effective 9/2/09; ARC 2016C, IAB 6/10/15, effective 7/15/15]

282—13.15(272) Specific requirements for a Class G license. Rescinded ARC 5321C, IAB 12/16/20, effective 1/20/21.

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

13.16(1) *Substitute teacher requirements.* A substitute teacher's license may be issued to an individual who has completed a teacher preparation program and been the holder of, or presently holds, or is eligible to hold, a license in Iowa.

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

13.16(3) *Authorization.* The holder of a substitute license is authorized to substitute teach in any school system in any position in which a regularly licensed teacher is employed except in the driver's education classroom. In addition to the authority inherent in the initial, standard, master educator, professional administrator, regional exchange, full career and technical education authorization, full native language teaching authorization, professional service license, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect. The executive director may grant permission for a substitute to serve outside of a substitute's regular authority under unique circumstances.

[**ARC 9205B**, IAB 11/3/10, effective 12/8/10; **ARC 9206B**, IAB 11/3/10, effective 12/8/10; **ARC 0605C**, IAB 2/20/13, effective 3/27/13; **ARC 1324C**, IAB 2/19/14, effective 3/26/14; **ARC 2016C**, IAB 6/10/15, effective 7/15/15; **ARC 5303C**, IAB 12/2/20, effective 1/6/21; **ARC 5321C**, IAB 12/16/20, effective 1/20/21; see Delay note at end of chapter]

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

13.17(1) *Teacher exchange license.*

a. For an applicant applying under subrule 13.5(2), a two-year nonrenewable exchange license may be issued to the applicant under any of the following conditions:

(1) The applicant has met the minimum coursework requirements for licensure but has some coursework deficiencies. An applicant must have completed a minimum of a bachelor's degree and at least 75 percent of the coursework as outlined in 281—subrules 79.15(2) to 79.15(5) and an endorsement requirement. Any coursework deficiencies must be completed for college credit, with the exception of human relations which may be taken for licensure renewal credit through an approved provider.

(2) The applicant submits verification that the applicant has applied for and will receive the applicant's first teaching license and is waiting for the processing or printing of a valid and current out-of-state license. The lack of a valid and current out-of-state license will be listed as a deficiency.

b. At any time during the term of the exchange license, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

13.17(2) *International teacher exchange license.*

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

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

(2) The applicant is a participant in a teacher exchange program administered through the Iowa department of education, the U.S. Department of Education, or the U.S. Department of State.

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

c. This license shall not exceed one year unless the applicant can verify continued participation in the exchange program beyond one year.

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

13.17(3) *Military exchange license.*

a. Definitions.

"*Military service*" means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“*Veteran*” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

b. Spouses of active duty military service members applying under 13.5(2). A three-year nonrenewable military exchange license may be issued to the applicant under the following conditions:

(1) The applicant has completed a baccalaureate degree and a traditional state-approved teacher preparation program.

(2) The applicant is the holder of a valid and current or an expired teaching license from another state.

(3) The applicant provides verification of the applicant’s connection to or the applicant’s spouse’s connection to the military by providing a copy of current military orders with either a marriage license or a copy of a military ID card for the applicant’s spouse.

(4) This license may be converted to a one-year regional exchange license upon application and payment of fees.

c. Veterans or their spouses applying under 13.5(2). A three-year military exchange license may be issued to an applicant who meets the requirements of 13.17(3) “b”(1) and (2). A veteran must provide a copy of the veteran’s DD 214. A spouse must provide a copy of the veteran spouse’s DD 214 and the couple’s marriage license.

d. Spouses of active duty military service veterans, or veterans’ spouses applying under 13.5(2). If the applicant has completed a nontraditional teacher preparation program but is not eligible for a teaching license, the applicant will be issued a substitute license, and the initial review for the portfolio review process will be completed by board staff. An applicant must provide verification of connection to the military outlined in 13.17(3) “b”(3) or 13.17(3) “c.”

e. Military education, training, and service credit. An applicant for the military exchange license may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting documentation to the board of educational examiners. The applicant shall identify the experience or educational requirement to which the credit would be applied if granted. The board of educational examiners shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational requirement for licensure.

[ARC 8138B, IAB 9/9/09, effective 10/14/09; ARC 8604B, IAB 3/10/10, effective 4/14/10; ARC 9072B, IAB 9/8/10, effective 10/13/10; ARC 9840B, IAB 11/2/11, effective 12/7/11; ARC 0563C, IAB 1/23/13, effective 1/1/13; ARC 0868C, IAB 7/24/13, effective 8/28/13; ARC 1166C, IAB 11/13/13, effective 12/18/13; ARC 1323C, IAB 2/19/14, effective 3/26/14; ARC 1454C, IAB 5/14/14, effective 6/18/14; ARC 1878C, IAB 2/18/15, effective 3/25/15; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 3196C, IAB 7/5/17, effective 8/9/17; ARC 5304C, IAB 12/2/20, effective 1/6/21; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—13.18(272) General requirements for an original teaching subject area endorsement. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

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

282—13.20(272) Permanent professional certificates. Effective October 1, 1988, the permanent professional certificate will no longer be issued. Any permanent professional certificate issued prior to October 1, 1988, will continue in force with the endorsements and approvals appearing thereon, unless revoked or suspended for cause. If a permanent professional certificate is revoked and if the holder is able at a later date to overcome or remediate the reasons for the revocation, the holder may apply for the appropriate new class of license set forth in this chapter.

[ARC 3633C, IAB 2/14/18, effective 3/21/18]

282—13.21(272) Human relations requirements for practitioner licensure. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

282—13.22(272) Development of human relations components. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

282—13.23 to 13.25 Reserved.

282—13.26(272) Requirements for elementary endorsements.**13.26(1) Teacher—prekindergarten-kindergarten.**

a. Authorization. The holder of this endorsement is authorized to teach at the prekindergarten-kindergarten level. Applicants for this endorsement must also hold the teacher—elementary classroom endorsement set forth in subrule 13.26(4) or the early childhood special education endorsement set forth in 282—subrule 14.2(1).

b. Content. Coursework must total a minimum of 18 semester hours and shall include the following:

(1) Child development and learning to include young children's characteristics and needs, with an emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, the multiple interacting influences on early development, and the creation of environments that are healthy, respectful, supportive, and challenging for each and every child.

(2) Building family and community relationships to include understanding that successful early childhood education depends upon reciprocal and respectful partnerships with families, communities, and agencies, that these partnerships have complex and diverse characteristics, and that all families should be involved in their children's development and learning.

(3) Assessment in early childhood to include child observation, documentation, and data collection, the development of appropriate goals, the benefits and uses of assessment for curriculum and instructional strategies, the use of technology when appropriate for assessment and adaptations, and building assessment partnerships with families to positively influence the development of each child.

(4) Developmentally effective approaches to include understanding how positive relationships and supportive interactions are the foundation of working with young children and families; knowing and understanding a wide array of developmentally appropriate approaches, including play and creativity, instructional strategies, and tools to connect with children and families; and reflecting on the teacher's own practice to promote positive outcomes for each child.

(5) Content knowledge to build a meaningful curriculum through the use of academic disciplines, including language and literacy, the arts (music, drama, dance, and visual arts), mathematics, science, social studies, physical activity, and health, for designing, implementing, and evaluating inquiry-based experiences that promote positive development and learning for each child.

(6) Collaboration and professionalism to include involvement in the early childhood field, knowledge about ethical and early childhood professional standards, engagement in continuous collaborative learning to inform practice, reflective and critical perspectives on early childhood education, and informed advocacy for young children and the profession.

(7) Field experiences and opportunities to observe and practice in a variety of early childhood settings, which include, at a minimum, 40 hours of observation and practice in a variety of preschool settings such as urban, rural, socioeconomic status, cultural diversity, program types, and program sponsorship.

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

(9) Student teaching in a prekindergarten setting as required in rule 281—79.14(256).

13.26(2) Teacher—birth through grade three, inclusive settings.

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

b. Content.

(1) Promoting child development and learning and individual learning differences.

1. Understand the nature of child growth and development for infants and toddlers (birth through age 2), preprimary (age 3 through age 5) and primary school children (age 6 through age 8), both typical and atypical, in areas of cognition, language development, physical motor, social-emotional, mental health, aesthetics, and adaptive behavior and how these impact development and learning in the first years of life, including the etiology, characteristics, and classifications of common disabilities in infants and young children and specific implications for development and learning.

2. Recognize that children are best understood in the contexts of family, culture and society and that cultural and linguistic diversity, stress, risk factors, biological and environmental factors, family

strengths, and trauma influence development and learning at all stages, including pre-, peri-, and postnatal development and learning. Communicate the importance of responsive care to a child's development of identity and sense of self.

3. Use developmental knowledge to create learning environments and classroom procedures that promote positive social interaction, active engagement, high expectations for learning, mutual respect, and self-regulation through individually appropriate expectations and positive guidance techniques for each child to meet the child's optimum potential regardless of proficiency. Implement and evaluate preventative and reductive strategies to address challenging behaviors. Use motivational and instructional interventions to teach individuals with exceptionalities how to adapt to different environments. Know how to intervene safely and appropriately with individuals in crisis.

4. Use both child-initiated and teacher-facilitated instructional methods, including strategies such as small and large group projects, play, systematic instruction, group discussion and cooperative decision making. Organize space, time, materials, peers, and adults to maximize progress in natural and structured environments. Embed learning opportunities in everyday routines, relationships, activities, and places. Understand the impact of social and physical environments on development and learning.

5. Engage in intentional practices and implement learning experiences that value diversity and demonstrate understanding that bias and discrimination impact development. Understand how language, culture, and family background influence and support the learning of each child.

(2) Building family and community relationships.

1. Build family and community relationships to include understanding that successful early childhood education depends upon reciprocal and respectful partnerships with families, communities, and agencies, that these partnerships have complex and diverse characteristics, and that all families should be involved in their children's development and learning.

2. Understand diverse family and community characteristics and how language, culture, and family background influence and support children's learning, and apply that knowledge to develop, implement, and evaluate learning experience and strategies that respect and reflect the diversity of children and their families.

3. Understand how to apply theories and knowledge of dynamic roles and relationships within and between families, schools, and communities. Recognize how to adapt consistently to the expressed and observed strengths and needs of the family, including two-way communication, and how to support families' choices and priorities in the development of goals and intervention strategies.

4. Understand how to coordinate with all (caregivers, professionals, and agencies) who provide care and learning opportunities for each child by developing a community of support for children and families through interagency collaboration to include agreements, referrals, and consultation.

(3) Observing, documenting, and assessing to support young children and families.

1. Use technically sound formal and informal assessments that minimize bias and evaluation results to adapt and guide instruction. Demonstrate a range of appropriate assessment and evaluation strategies (e.g., family interview, observation, documentation, assessment instrument) to support individual strengths, interests, and needs.

2. Design curricula, assessments, and teaching and intervention strategies that align with learner and program goals, including the development of individualized family service plans (IFSPs) and individualized education plans (IEPs). Assist families in identifying resources, priorities, and concerns in relation to the child's development. Understand and utilize assessment partnerships with families and with professional colleagues to build effective learning environments. Understand the role of the families in the assessment process and support the choices they make (e.g., observer, participant). Participate as a team member to integrate assessment results in the development and implementation of individualized plans.

3. Understand and utilize observation, documentation, and other appropriate assessment tools and approaches, including the use of technology in documentation, assessment and data collection. Implement authentic assessment based on observation of spontaneous play. Demonstrate knowledge of alignment of assessment with curriculum, content standards, and local, state, and federal requirements. Assess progress in the developmental domains, play, and temperament.

4. Understand and utilize responsible assessments to promote positive outcomes for each child, including the use of assistive technology for children with disabilities. Use a variety of materials and contexts to maintain the interest of infants and young children in the assessment process.

5. Implement current educational, legal, and ethical guidelines when using assessment practices to support children's individual strengths, interests, and needs (e.g., cultural, linguistic, ability diversity).

(4) Using developmentally and individually effective approaches to connect with children and families.

1. Understand positive relationships and supportive interactions as the foundation of the teacher's work with young children. Reflect on the teacher's own practice to promote positive outcomes for each child and family.

2. Develop, implement, and evaluate individualized plans, including IFSPs and IEPs, as a team leader with families and other professionals. Demonstrate appropriate and effective supports for children and families transitioning into and out of programs or classrooms. Seek and use additional resources and agencies outside the program/school when needed to effectively facilitate the learning and social/emotional development of each child.

3. Plan, develop, implement, and evaluate integrated learning experiences for home-, center- and school-based environments for infants, toddlers, preprimary and primary children, their families, and other care providers based on knowledge of individual children, the family, and the community. Select, develop, and evaluate developmentally and functionally appropriate materials, equipment, and environments. Develop adaptations and accommodations for infants, toddlers, preprimary, and primary children to meet their individual needs. Use a broad repertoire of developmentally and individually appropriate teaching/learning approaches and effective strategies and tools for early education, including appropriate uses of technology. Facilitate child-initiated development and learning.

4. Consider an individual's abilities, interests, learning environments, and cultural and linguistic factors in the selection, development, and adaptation of learning experiences for individuals with exceptionalities. Use teacher-scaffolded and -initiated instruction to complement child-initiated learning. Link development, learning experiences, and instruction to promote educational transitions. Use individual and group guidance and problem-solving techniques to develop supportive relationships with and among children. Use strategies to teach social skills and conflict resolution.

5. Implement basic health, nutrition, and safety management procedures, including the design of physically and psychologically safe and healthy indoor and outdoor environments to promote development and learning. Recognize signs of emotional distress, physical and mental abuse and neglect in young children and understand mandatory reporting procedures. Demonstrate proficiency in infant-child cardiopulmonary resuscitation, emergency procedures and first aid.

6. Understand principles of administration, organization, and operation of programs for children from birth to age 8 and their families, including staff and program development, supervision, evaluation of staff, and continuing improvement of programs and services. Employ adult learning principles in consulting with and training family members and service providers.

7. Demonstrate the ability to collaborate with general educators and other colleagues to create safe, inclusive, culturally responsive learning environments to engage individuals with exceptionalities and diverse abilities in meaningful learning activities and social interactions.

(5) Using content knowledge to build a meaningful curriculum.

1. Develop and implement appropriate current research-supported learning experiences with a focus on the developmental domains, play, temperament, language and literacy to include first (home) and second language acquisition, mathematics, science, the arts (music, visual art, and drama), physical activity, health and safety, social studies, social skills, higher-thinking skills, and developmentally and individually appropriate methodology. Methods courses are required for the following areas: literacy, mathematics, social studies, science, physical education and wellness, and visual and performing arts.

2. Use the Iowa Early Learning Standards and the Iowa core with information from ongoing child observations and assessments to plan, implement, and evaluate appropriate instruction that improves academic and developmental progress of each child, including those with IFSPs/IEPs.

3. Understand the central concepts, structures of the discipline, and tools of inquiry of content areas taught, and demonstrate the ability to organize this knowledge, integrate cross-disciplinary skills, and develop meaningful learning progressions for individuals with exceptionalities (diverse abilities).

4. Modify general and specialized curricula to make them accessible to individuals with exceptionalities (diverse abilities). Develop adaptations and accommodations for infants, toddlers, preprimary, and primary children to meet their individual needs.

(6) Professional responsibilities.

1. Demonstrate awareness of early childhood program criteria, including the following: National Association for the Education of Young Children (NAEYC), Iowa Early Learning Standards, Head Start Performance Standards, and Iowa Quality Preschool Program Standards (IQPPS).

2. Collaborate with supervisors, mentors, and colleagues to enhance professional growth within and across disciplines to inform practice, including the use of data for decision making, and understand how to design and implement a professional development plan based on student achievement, self, peer, and supervisory evaluations and recommended practices.

3. Understand the significance of lifelong learning and participate in professional activities and learning communities. Participate in activities of professional organizations relevant to early childhood regular education, special education, and early intervention.

4. Use relevant national and state professional guidelines (national, state, or local), state curriculum standards, and current trends for content and outcomes and to inform and improve practices for young children and their families.

5. Adhere to state and national professional and ethical principles, practices, and codes.

6. Advocate for developmentally and individually appropriate practice, demonstrate awareness of issues that affect the lives of each child, and demonstrate necessary communication skills.

7. Understand historical, philosophical and foundational knowledge and how current issues and the legal bases of services influence professional practice in early childhood, early intervention, early childhood special education, and general and regular education in the K-3 age groups. Understand trends and issues in early childhood education, early childhood special education, and early intervention.

8. Provide guidance and direction to paraeducators, tutors, and volunteers.

(7) Early childhood field experiences.

1. Pre-student teaching field experiences, which must comprise a minimum of 100 clock hours, to include at least 20 hours of working with each age group (infants and toddlers, preprimary, and primary).

2. Experiences working in at least three settings that offer early childhood education, such as approved child care centers and registered child development homes, school-based preschool, community agencies, or home visiting programs.

3. Experiences working with children who have a range of abilities and disabilities and who reflect diverse family systems and other differentiating factors, such as urban and rural, socioeconomic status, and cultural and linguistic diversity.

4. Completion of supervised student teaching experience in at least two different settings including registered child development homes, home visiting programs, state-accredited child care centers, or classrooms which include both children with and without disabilities in two of three age levels: infant and toddler, preprimary, and primary.

13.26(3) Teacher—prekindergarten through grade three, including special education. Rescinded IAB 7/5/17, effective 8/9/17.

13.26(4) Teacher—elementary classroom.

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

b. *Content.*

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

(2) At least 9 semester hours in literacy development, which must include:

1. Content:

- Oral and written communication development; and linguistics, including phonology and phonological awareness, sound-symbol association, syllable types, morphology, syntax and semantics, and the relationship of these components to typical and atypical reading development and reading instruction;

- Phonemic awareness;
- Word identification, including phonics and orthography;
- Fluency;
- Vocabulary;
- Comprehension;
- Writing mechanics;
- Writing conventions;
- Writing process;
- Children's literature.

2. Methods:

- Assessment, diagnosis and evaluation of student learning in literacy, including the knowledge of the signs and symptoms of dyslexia and other reading difficulties;

- Integration of the language arts (to include reading, writing, speaking, viewing, and listening);
- Integration of technology in teaching and student learning in literacy;
- Current best-practice, research-based strategies and instructional technology for designing and delivering effective instruction, including appropriate interventions, groupings, remediation, assistive technology, and classroom accommodations for all students including students with dyslexia and other difficulties;

- Classroom management as it applies to literacy methods;
- Pre-student teaching clinical experience in teaching literacy.

(3) At least 9 semester hours in mathematics which must include:

1. Content:

- Numbers and operations;
- Algebra/number patterns;
- Geometry;
- Measurement;
- Data analysis/probability.

2. Methods:

- Assessment, diagnosis and evaluation of student learning in mathematics;
- Current best-practice, research-based instructional methods in mathematical processes (to include problem solving; reasoning; communication; the ability to recognize, make and apply connections; integration of manipulatives; the ability to construct and to apply multiple connected representations; and the application of content to real world experiences);

- Integration of technology in teaching and student learning in mathematics;
- Classroom management as it applies to mathematics methods;
- Pre-student teaching clinical experience in teaching mathematics.

(4) At least 9 semester hours in social sciences which must include:

1. Content:

- History;
- Geography;
- Political science/civic literacy;
- Economics;
- Behavioral sciences.

2. Methods:

- Current best-practice, research-based approaches to the teaching and learning of social sciences;
- Integration of technology in teaching and student learning in social sciences;
- Classroom management as it applies to social science methods.

(5) At least 9 semester hours in science which must include:

1. Content:
 - Physical science;
 - Earth/space science;
 - Life science.
 2. Methods:
 - Current best-practice, research-based methods of inquiry-based teaching and learning of science;
 - Integration of technology in teaching and student learning in science;
 - Classroom management as it applies to science methods.
 - (6) At least 3 semester hours to include all of the following:
 1. Methods of teaching elementary physical education, health, and wellness;
 2. Methods of teaching visual arts for the elementary classroom;
 3. Methods of teaching performance arts for the elementary classroom.
 - (7) Pre-student teaching field experience in at least two different grade levels to include one primary and one intermediate placement.
 - (8) A field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.
 - (9) Student teaching in an elementary general education classroom.
- [ARC 8400B, IAB 12/16/09, effective 1/20/10; ARC 8401B, IAB 12/16/09, effective 1/20/10; ARC 8402B, IAB 12/16/09, effective 1/20/10; ARC 8607B, IAB 3/10/10, effective 4/14/10; ARC 0446C, IAB 11/14/12, effective 12/19/12; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2527C, IAB 5/11/16, effective 6/15/16; ARC 2584C, IAB 6/22/16, effective 7/27/16; ARC 3197C, IAB 7/5/17, effective 8/9/17]

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

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

13.27(2) Program requirements.

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

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

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

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

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

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

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

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

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

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

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

[ARC 2016C, IAB 6/10/15, effective 7/15/15]

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

13.28(1) Agriculture. 5-12. Completion of 24 semester credit hours in agriculture and agriculture education to include:

- a.* Foundations of vocational and career education.
- b.* Planning and implementing courses and curriculum.
- c.* Methods and techniques of instruction to include evaluation of programs and students.
- d.* Coordination of cooperative education programs.
- e.* Coursework in each of the following areas and at least three semester credit hours in five of the following areas:

- (1) Agribusiness systems.
- (2) Power, structural, and technical systems.
- (3) Plant systems.
- (4) Animal systems.
- (5) Natural resources systems.
- (6) Environmental service systems.
- (7) Food products and processing systems.

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

13.28(3) Business—all. 5-12. Completion of 30 semester hours in business to include 6 semester hours in accounting, 3 semester hours in business law to include contract law, 3 semester hours in computer and technical applications in business, 6 semester hours in marketing to include consumer studies, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation. Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above.

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

13.28(5) English/language arts.

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

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

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

a. Written communication.

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

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

b. Oral communication.

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

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

c. Language development.

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

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

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

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

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

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

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

e. Creative voice.

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

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

f. Argumentation/debate.

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

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

g. Journalism.

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

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

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

h. Mass media production.

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

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

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

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

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

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

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

13.28(8) Health. K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

For holders of physical education or family and consumer science endorsements, completion of 18 credit hours in health to include coursework in public or community health, personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

13.28(9) Family and consumer sciences—general. 5-12. Completion of 24 semester hours in family and consumer sciences to include coursework in lifespan development, parenting and child development education, family studies, consumer resource management, textiles or apparel design and merchandising, housing, foods and nutrition, and foundations of career and technical education as related to family and consumer sciences.

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

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

13.28(12) Mathematics.

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

b. 5-12.

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

(2) For holders of the physics 5-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

(3) For holders of the all science 9-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

c. 5-8 algebra for high school credit. For a 5-8 algebra for high school credit endorsement, hold a K-8 mathematics, middle school mathematics, K-8 STEM, or 5-8 STEM endorsement and complete a college algebra or linear algebra class. This endorsement allows the holder to teach algebra to grades 5-8 for high school credit.

d. 5-12 mathematics—basic. Completion of 24 semester hours in mathematics which must minimally include a course titled college algebra or a higher algebra course, a geometry course, a computer programming course, and a probability and statistics course.

13.28(13) Music.

a. K-8. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music, and a methods course in each of the following: general, choral, and instrumental music.

b. 5-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting, and a methods course in each of the following: general, choral, and instrumental music.

13.28(14) Physical education.

a. K-8. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, adaptive physical education, personal wellness, human growth and development of children related to physical education, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

b. 5-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, adaptive physical education, curriculum and administration of physical education, personal wellness, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

13.28(15) Reading. K-8 and 5-12. Completion of 24 semester hours in reading to include all of the following requirements:

a. *Foundations of reading.* This requirement includes the following competencies:

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

(2) The practitioner demonstrates knowledge of a range of research pertaining to reading, writing, and learning, including the analysis of scientifically based reading research, and knowledge of histories of reading. The range of research encompasses research traditions from the fields of the social sciences and other paradigms appropriate for informing practice and also definitions of reading difficulties including but not limited to dyslexia.

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

b. *Reading curriculum and instruction.* This requirement includes the following competencies:

(1) The practitioner demonstrates knowledge of designing and implementing an integrated, comprehensive, and balanced curriculum that addresses the major components of reading and contains a wide range of texts, including but not limited to narrative, expository, and poetry, and including traditional print, digital, and online resources.

(2) The practitioner uses knowledge of a range of research-based strategies and instructional technology for designing and delivering effective instruction, including appropriate interventions, remediation, assistive technology, and classroom accommodations for students with dyslexia and other difficulties.

(3) The practitioner demonstrates knowledge of grouping students, selecting materials appropriate for learners with diverse abilities at various stages of reading and writing development, differentiating instruction to meet the unique needs of all learners, including students with dyslexia, offering sufficient opportunities for students to practice reading skills, and providing frequent and specific instructional feedback to guide students' learning.

(4) The practitioner demonstrates knowledge of designing instruction to meet the needs of diverse populations, including populations in urban, suburban, and rural settings, as well as for students from various cultural and linguistic backgrounds.

(5) The practitioner demonstrates knowledge of creating a literate physical environment which is low risk, supports students as agents of their own learning, and supports a positive socio-emotional impact for students to identify as readers.

c. *Reading assessment, diagnosis and evaluation.* This requirement includes the following competencies:

(1) The practitioner understands types of reading and writing assessments and their purposes, strengths, and limitations.

(2) The practitioner demonstrates knowledge of selecting and developing appropriate assessment instruments, procedures, and practices that range from individual to group and from formal to informal

to alternative for the identification, screening, and diagnosis of all students' reading proficiencies and needs including knowledge of the signs and symptoms of dyslexia and other reading difficulties.

(3) The practitioner demonstrates knowledge of assessment data analysis to inform, plan, measure, progress monitor, and revise instruction for all students and to communicate the outcomes of ongoing assessments to all stakeholders.

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

d. Reading in the content areas. This requirement includes the following competencies:

(1) The practitioner demonstrates knowledge of morphology and the etymology of words, along with text structure and the dimensions of content area vocabulary and comprehension, including literal, interpretive, critical, and evaluative.

(2) The practitioner demonstrates an understanding of reading theory, reading knowledge, and a variety of research-based strategies and approaches to provide effective literacy instruction into content areas.

(3) The practitioner demonstrates knowledge of integrating literacy instruction into content areas for all students, including but not limited to students with disabilities, students who are at risk of academic failure, students who have been identified as gifted and talented, students who have limited English language proficiency, and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B.

e. Language development. This requirement includes the following competency: The practitioner uses knowledge of oral language development, linguistics including phonology and phonological awareness, sound-symbol association, syllable types, morphology, syntax and semantics and the relationship of these components to typical and atypical reading development and reading instruction, cognitive academic language development, oral and written language proficiency (including second language development), acquisition of reading skills, and the variations related to cultural and linguistic diversity to provide effective instruction in reading and writing.

f. Oral communication instruction. This requirement includes the following competencies:

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

(2) The practitioner uses effective strategies for facilitating the learning of language for academic purposes by all learners.

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

h. Children's fiction and nonfiction (K-8 only) or adolescent or young adult fiction and nonfiction (5-12 only). This requirement includes the following competency: The practitioner uses knowledge of children's literature (K-8) or adolescent or young adult literature (5-12) for:

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

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

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

i. Practicum. This requirement includes the following competencies:

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

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

13.28(16) Reading specialist. K-12. The applicant must have met the requirements for the standard license and a K-8 or 5-12 reading endorsement and must present evidence of at least three years of experience which included the teaching of reading as a significant part of the responsibility.

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

b. Program requirements. Degree—master’s.

c. Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least 24 semester hours to include the following:

(1) Foundations of reading. The reading specialist will understand the historical, theoretical, and evidence-based foundations of reading and writing processes and instruction and will be able to interpret these findings to model exemplary instructional methods for students with typical and atypical literacy development and effectively develop and lead professional development.

(2) Curriculum and instruction. The reading specialist will use instructional approaches, materials, and an integrated, comprehensive, balanced curriculum to support student learning in reading and writing including the following:

1. Work collaboratively with teachers to develop a literacy curriculum that has vertical and horizontal alignment K-12 and that uses instructional approaches supported by literature and research for the following areas: print, phonemic awareness, phonics, fluency, comprehension, vocabulary, writing, critical thinking, and motivation.

2. Support classroom teachers to implement and adapt in-depth instructional approaches, including but not limited to approaches to improve decoding, comprehension, and information retention, to meet the language-proficiency needs of English language learners and the needs of students with reading difficulties or reading disabilities, including appropriate interventions, remediation, assistive technology, and classroom accommodations for students with dyslexia and other difficulties within or outside the regular classroom.

3. Demonstrate a knowledge of a wide variety of quality traditional print, digital, and online resources and support classroom teachers in building and using a quality, accessible classroom library and materials collection that meets the specific needs and abilities of all learners.

4. Provide support for curriculum and instruction through modeling, coteaching, observing, planning, reviewing literacy data, and providing resources.

(3) Assessment, diagnosis, and evaluation. The reading specialist will use a variety of assessment tools and practices to plan and evaluate effective reading and writing instruction including the following:

1. Demonstrate an understanding of the literature and research related to assessments and their purposes, including the strengths and limitations of assessments, and assessment tools for screening, diagnosis, progress monitoring, and measuring outcomes; demonstrate an understanding of the signs and symptoms of reading difficulties including but not limited to dyslexia; and also demonstrate an understanding of district and state assessments, proficiency standards and student benchmarks.

2. Select, administer, and interpret assessments for specific purposes, including collaboration with teachers in the analysis of data, and leading schoolwide or districtwide scale analyses to select assessment tools that provide a systemic framework for assessing reading, writing, and language growth of all students, including those with reading difficulties and reading disabilities including but not limited to students with dyslexia and English language learners.

3. Use assessment information to plan and evaluate instruction, including multiple data sources for analysis and instructional planning, for examining the effectiveness of specific intervention practices and students’ responses to interventions including appropriate interventions, remediation, assistive technology, and classroom accommodations for students with dyslexia and other difficulties, and to plan professional development initiatives.

4. Communicate assessment results and implications to a variety of audiences.

(4) Administration and supervision of reading programs. The reading specialist will:

1. Demonstrate foundational knowledge of adult learning theories and related research about organizational change, professional development, and school culture.

2. Demonstrate the practical application of literacy leadership including planning, developing, supervising, and evaluating literacy programs at all levels.

3. Demonstrate knowledge of supervising an overall reading program, including but not limited to staffing; budgetary practices; planning, preparing, and selecting materials; subsystems; special provisions; and evaluating teacher performance.

4. Participate in, design, facilitate, lead, and evaluate effective and differentiated professional development programs to effectively implement literacy instruction.

5. Demonstrate an understanding of local, state, and national policies that affect reading and writing instruction.

6. Promote effective communication and collaboration among stakeholders, including parents and guardians, teachers, administrators, policymakers, and community members, and advocate for change when necessary to promote effective literacy instruction.

(5) Educational research, measurement and evaluation. The reading specialist will effectively utilize existing research and learn to conduct new research to continuously improve the design and implementation of a comprehensive reading system.

(6) Psychology of language and reading. The reading specialist will understand the highly complex processes by which children learn to speak, read, and write, including language acquisition, linguistics including phonology and phonological awareness, sound-symbol association, syllable types, morphology, syntax and semantics and the relationship of these components to typical and atypical reading development and reading instruction, ranges of individual differences, reading difficulties and reading disabilities, including but not limited to dyslexia, and the importance of the role of diversity in learning to read and write.

(7) Practicum in reading leadership. The reading specialist will participate in elementary and secondary practicum experiences with licensed teachers who are serving in leadership roles in the area of reading.

13.28(17) Science.

a. Science—basic. K-8.

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

(2) Pedagogy competencies.

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

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

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

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

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

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

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

e. Basic science. 5-12. Completion of 24 semester hours of credit in science to include the following:

(1) Six semester hours of credit in earth and space science to include the following essential concepts and skills:

1. Understand and apply knowledge of energy in the earth system.

2. Understand and apply knowledge of geochemical cycles.

(2) Six semester hours of credit in life science/biological science to include the following essential concepts and skills:

1. Understand and apply knowledge of the cell.

2. Understand and apply knowledge of the molecular basis of heredity.

3. Understand and apply knowledge of the interdependence of organisms.
4. Understand and apply knowledge of matter, energy, and organization in living systems.
5. Understand and apply knowledge of the behavior of organisms.
- (3) Six semester hours of credit in physics/physical science to include the following essential concepts and skills:
 1. Understand and apply knowledge of the structure of atoms.
 2. Understand and apply knowledge of the structure and properties of matter.
 3. Understand and apply knowledge of motions and forces.
 4. Understand and apply knowledge of interactions of energy and matter.
- (4) Six semester hours of credit in chemistry to include the following essential concepts and skills:
 1. Understand and apply knowledge of chemical reactions.
 2. Be able to design and conduct scientific investigations.
- f. *Physical science*. Rescinded IAB 11/14/12, effective 12/19/12.
- g. *Physics*.
 - (1) 5-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.
 - (2) For holders of the mathematics 5-12 endorsement, completion of:
 1. 12 credits of physics to include coursework in mechanics, electricity, and magnetism; and
 2. A methods class that includes inquiry-based instruction, resource management, and laboratory safety.
 - (3) For holders of the chemistry 5-12 endorsement, completion of 12 credits of physics to include coursework in mechanics, electricity, and magnetism.
 - h. *All science I*. Rescinded IAB 11/14/12, effective 12/19/12.
 - i. *All science*. 5-12.
 - (1) Completion of 36 semester hours of credit in science to include the following:
 1. Nine semester hours of credit in earth and space science to include the following essential concepts and skills:
 - Understand and apply knowledge of energy in the earth system.
 - Understand and apply knowledge of geochemical cycles.
 - Understand and apply knowledge of the origin and evolution of the earth system.
 - Understand and apply knowledge of the origin and evolution of the universe.
 2. Nine semester hours of credit in life science/biological science to include the following essential concepts and skills:
 - Understand and apply knowledge of the cell.
 - Understand and apply knowledge of the molecular basis of heredity.
 - Understand and apply knowledge of the interdependence of organisms.
 - Understand and apply knowledge of matter, energy, and organization in living systems.
 - Understand and apply knowledge of the behavior of organisms.
 - Understand and apply knowledge of biological evolution.
 3. Nine semester hours of credit in physics/physical science to include the following essential concepts and skills:
 - Understand and apply knowledge of the structure of atoms.
 - Understand and apply knowledge of the structure and properties of matter.
 - Understand and apply knowledge of motions and forces.
 - Understand and apply knowledge of interactions of energy and matter.
 - Understand and apply knowledge of conservation of energy and increase in disorder.
 4. Nine semester hours of credit in chemistry to include the following essential concepts and skills:
 - Understand and apply knowledge of chemical reactions.
 - Be able to design and conduct scientific investigations.
 - (2) Pedagogy competencies.
 1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.
3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.
4. Be able to use scientific understanding when dealing with personal and societal issues.

13.28(18) Social sciences.

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

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

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

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

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

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

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

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

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

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

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

l. Social sciences—basic. 5-12. Completion of 27 semester hours to include 9 semester hours in each of American history, world history, and American government. Holders of the 5-12 social sciences—basic endorsement may add the following endorsements with 6 semester hours per endorsement area: 5-12 economics, 5-12 geography, 5-12 psychology, or 5-12 sociology.

13.28(19) Speech communication/theatre.

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

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

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

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

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

- (1) Knowledge of pedagogy to include the following:
 1. Methods and curriculum to include the following:
 - Bilingual and ESL methods.
 - Literacy in native and second language.
 - Methods for subject matter content.
 - Adaptation and modification of curriculum.

2. Assessment to include language proficiency and academic content.
- (2) Knowledge of linguistics to include the following:
 1. Psycholinguistics and sociolinguistics.
 2. Language acquisition and proficiency to include the following:
 - Knowledge of first and second language proficiency.
 - Knowledge of first and second language acquisition.
 - Language to include structure and grammar of English.
 - (3) Knowledge of cultural and linguistic diversity to include the following:
 1. History.
 2. Theory, models, and research.
 3. Policy and legislation.
 - (4) Current issues with transient populations.

13.28(21) Elementary school teacher librarian.

a. Authorization. The holder of this endorsement is authorized to serve as a teacher librarian in prekindergarten through grade eight.

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

- (1) Literacy and reading. This requirement includes the following competencies:
 1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in children.
 2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among children, based on familiarity with selection tools and current trends in literature for children.
- (2) Information and knowledge. This requirement includes the following competencies:
 1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.
 2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.
 3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.
 4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.
 5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.
 6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.
 7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.
- (3) Program administration and leadership. This requirement includes the following competencies:
 1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.
 2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.
 3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.
 4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.
- (4) Practicum. This requirement includes the following competencies:
 1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the elementary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the elementary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the elementary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the elementary level.

13.28(22) Secondary school teacher librarian.

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

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

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in young adults.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among young adults, based on familiarity with selection tools and current trends in literature for young adults.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

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

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the secondary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the secondary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the secondary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the secondary level.

13.28(23) School teacher librarian. PK-12.

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

b. Program requirements. Degree—master's.

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

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy for youth of all ages.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading, based on familiarity with selection tools and current trends in literature for youth of all ages.

3. Practitioners understand how to develop a collection of reading and informational materials in print and digital formats that supports the diverse developmental, cultural, social and linguistic needs of all learners and their communities.

4. Practitioners model and teach reading comprehension strategies to create meaning from text for youth of all ages.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

8. Practitioners understand the process of collecting, interpreting, and using data to develop new knowledge to improve the school library program.

9. Practitioners employ the methods of research in library and information science.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users of all ages.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

5. Practitioners demonstrate knowledge of best practices related to planning, budgeting (including alternative funding), organizing, and evaluating human and information resources and facilities to ensure equitable access.

6. Practitioners understand strategic planning to ensure that the school library program addresses the needs of diverse communities.

7. Practitioners advocate for school library and information programs, resources, and services among stakeholders.

8. Practitioners promote initiatives and partnerships to further the mission and goals of the school library program.

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

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the elementary and secondary levels.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the elementary and secondary levels.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the elementary and secondary levels.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula.

13.28(24) Talented and gifted teacher.

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

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

(1) Psychology of the gifted.

1. Social needs.

2. Emotional needs.

(2) Programming for the gifted.

1. Prekindergarten-12 identification.

2. Differentiation strategies.

3. Collaborative teaching skills.

4. Program goals and performance measures.

5. Program evaluation.

(3) Practicum experience in gifted programs.

NOTE: Teachers in specific subject areas will not be required to hold this endorsement if they teach gifted students in their respective endorsement areas.

13.28(25) American Sign Language endorsement.

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

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

(1) Second language acquisition.

(2) Sociology of the deaf and hard-of-hearing community.

(3) Linguistic structure of American Sign Language.

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

(5) Teaching the culture of deaf and hard-of-hearing people.

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

13.28(26) Elementary professional school counselor.

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

- b. *Program requirements.* Master's degree from an accredited institution of higher education.
- c. *Content.* Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements to include the following:
 - (1) Nature and needs of individuals at all developmental levels.
 - 1. Develop strategies for facilitating development through the transition from childhood to adolescence and from adolescence to young adulthood.
 - 2. Apply knowledge of learning and personality development to assist students in developing their full potential.
 - (2) Social and cultural foundations.
 - 1. Demonstrate awareness of and sensitivity to the unique social, cultural, and economic circumstances of students and their racial/ethnic, gender, age, physical, and learning differences.
 - 2. Demonstrate sensitivity to the nature and the functioning of the student within the family, school and community contexts.
 - 3. Demonstrate the counseling and consultation skills needed to facilitate informed and appropriate action in response to the needs of students.
 - (3) Fostering of relationships.
 - 1. Employ effective counseling and consultation skills with students, parents, colleagues, administrators, and others.
 - 2. Communicate effectively with parents, colleagues, students and administrators.
 - 3. Counsel students in the areas of personal, social, academic, and career development.
 - 4. Assist families in helping their children address the personal, social, and emotional concerns and problems that may impede educational progress.
 - 5. Implement developmentally appropriate counseling interventions with children and adolescents.
 - 6. Demonstrate the ability to negotiate and move individuals and groups toward consensus or conflict resolution or both.
 - 7. Refer students for specialized help when appropriate.
 - 8. Value the well-being of the students as paramount in the counseling relationship.
 - (4) Group work.
 - 1. Implement developmentally appropriate interventions involving group dynamics, counseling theories, group counseling methods and skills, and other group work approaches.
 - 2. Apply knowledge of group counseling in implementing appropriate group processes for elementary, middle school, and secondary students.
 - (5) Career development, education, and postsecondary planning.
 - 1. Assist students in the assessment of their individual strengths, weaknesses, and differences, including those that relate to academic achievement and future plans.
 - 2. Apply knowledge of career assessment and career choice programs.
 - 3. Implement occupational and educational placement, follow-up and evaluation.
 - 4. Develop a counseling network and provide resources for use by students in personalizing the exploration of postsecondary educational opportunities.
 - (6) Assessment and evaluation.
 - 1. Demonstrate individual and group approaches to assessment and evaluation.
 - 2. Demonstrate an understanding of the proper administration and uses of standardized tests.
 - 3. Apply knowledge of test administration, scoring, and measurement concerns.
 - 4. Apply evaluation procedures for monitoring student achievement.
 - 5. Apply assessment information in program design and program modifications to address students' needs.
 - 6. Apply knowledge of legal and ethical issues related to assessment and student records.
 - (7) Professional orientation.
 - 1. Apply knowledge of history, roles, organizational structures, ethics, standards, and credentialing.
 - 2. Maintain a high level of professional knowledge and skills.

3. Apply knowledge of professional and ethical standards to the practice of school counseling.
 4. Articulate the professional school counselor role to school personnel, parents, community, and students.
- (8) School counseling skills.
1. Design, implement, and evaluate a comprehensive, developmental school counseling program.
 2. Implement and evaluate specific strategies designed to meet program goals and objectives.
 3. Consult and coordinate efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives.
 4. Provide information appropriate to the particular educational transition and assist students in understanding the relationship that their curricular experiences and academic achievements will have on subsequent educational opportunities.
 5. Assist parents and families in order to provide a supportive environment in which students can become effective learners and achieve success in pursuit of appropriate educational goals.
 6. Provide training, orientation, and consultation assistance to faculty, administrators, staff, and school officials to assist them in responding to the social, emotional, and educational development of all students.
 7. Collaborate with teachers, administrators, and other educators in ensuring that appropriate educational experiences are provided that allow all students to achieve success.
 8. Assist in the process of identifying and addressing the needs of the exceptional student.
 9. Apply knowledge of legal and ethical issues related to child abuse and mandatory reporting.
 10. Advocate for the educational needs of students and work to ensure that these needs are addressed at every level of the school experience.
 11. Promote use of school counseling and educational and career planning activities and programs involving the total school community to provide a positive school climate.
- (9) Classroom management.
1. Apply effective classroom management strategies as demonstrated in delivery of classroom and large group school counseling curriculum.
 2. Consult with teachers and parents about effective classroom management and behavior management strategies.
- (10) Curriculum.
1. Write classroom lessons including objectives, learning activities, and discussion questions.
 2. Utilize various methods of evaluating what students have learned in classroom lessons.
 3. Demonstrate competency in conducting classroom and other large group activities, utilizing an effective lesson plan design, engaging students in the learning process, and employing age-appropriate classroom management strategies.
 4. Design a classroom unit of developmentally appropriate learning experiences.
 5. Demonstrate knowledge in writing standards and benchmarks for curriculum.
- (11) Learning theory.
1. Identify and consult with teachers about how to create a positive learning environment utilizing such factors as effective classroom management strategies, building a sense of community in the classroom, and cooperative learning experiences.
 2. Identify and consult with teachers regarding teaching strategies designed to motivate students using small group learning activities, experiential learning activities, student mentoring programs, and shared decision-making opportunities.
 3. Demonstrate knowledge of child and adolescent development and identify developmentally appropriate teaching and learning strategies.
- (12) Teaching and counseling practicum. The candidate will complete a preservice supervised practicum of a minimum of 100 hours, and at least 40 of these hours must be direct service. Candidates will complete a supervised internship for a minimum of 600 hours, and at least 240 of these hours must be direct service. For candidates seeking both the K-8 and 5-12 professional school counselor

endorsements, a minimum of 100 hours of the practicum or internship experiences listed above must be completed at each of the desired endorsement levels.

13.28(27) Secondary professional school counselor.

a. Authorization. The holder of this endorsement is authorized to serve as a professional school counselor in grades five through twelve.

b. Program requirements. Master's degree from an accredited institution of higher education.

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

(1) The competencies listed in subparagraphs 13.28(26) "c"(1) to (11).

(2) The teaching and counseling practicum. The candidate will complete a preservice supervised practicum and an internship that meet the requirements set forth in 13.28(26) "c"(12).

13.28(28) School nurse endorsement. The school nurse endorsement does not authorize general classroom teaching, although it does authorize the holder to teach health at all grade levels. Alternatively, a nurse may obtain a statement of professional recognition (SPR) from the board of educational examiners, in accordance with the provisions set out in 282—Chapter 16, Statements of Professional Recognition (SPR).

a. Authorization. The holder of this endorsement is authorized to provide service as a school nurse at the prekindergarten and kindergarten levels and in grades one through twelve.

b. Content.

(1) Organization and administration of school nurse services including the appraisal of the health needs of children and youth.

(2) School-community relationships and resources/coordination of school and community resources to serve the health needs of children and youth.

(3) Knowledge and understanding of the health needs of exceptional children.

(4) Health education.

c. Other. Hold a license as a registered nurse issued by the Iowa board of nursing.

13.28(29) Athletic coach. K-12. An applicant for the coaching endorsement must hold a teacher's license with one of the teaching endorsements.

a. Authorization. The holder of this endorsement may serve as a head coach or an assistant coach in kindergarten and grades one through twelve.

b. Program requirements.

(1) One semester hour college or university course in the structure and function of the human body in relation to physical activity, and

(2) One semester hour college or university course in human growth and development of children and youth as related to physical activity, and

(3) Two semester hour college or university course in athletic conditioning, care and prevention of injuries and first aid as related to physical activity, and

(4) One semester hour college or university course in the theory of coaching interscholastic athletics, and

(5) Successful completion of the concussion training approved by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union, and

(6) A current certificate of CPR training.

13.28(30) Content specialist endorsement. Rescinded IAB 12/16/20, effective 1/20/21.

13.28(31) Engineering. 5-12.

a. Completion of 24 semester hours in engineering coursework.

b. Methods and strategies of STEM instruction or methods of teaching science or mathematics.

13.28(32) STEM.

a. K-8.

(1) Authorization. The holder of this endorsement is authorized to teach science, mathematics, and integrated STEM courses in kindergarten through grade eight.

(2) Program requirements. Be the holder of the teacher—elementary classroom endorsement.

(3) Content.

1. Completion of a minimum of 12 semester hours of college-level science.
 2. Completion of a minimum of 12 semester hours of college-level math (or the completion of Calculus I) to include coursework in computer programming.
 3. Completion of a minimum of 3 semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:
 - Engineering and technological design courses for education majors;
 - Technology or engineering content coursework.
 4. Completion of a minimum of 6 semester hours of required coursework in STEM curriculum and methods to include the following essential concepts and skills:
 - Comparing and contrasting the nature and goals of each of the STEM disciplines;
 - Promoting learning through purposeful, authentic, real-world connections;
 - Integration of content and context of each of the STEM disciplines;
 - Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);
 - Curriculum and standards mapping;
 - Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;
 - Assessment of integrative learning approaches;
 - Information literacy skills in STEM;
 - Processes of science and scientific inquiry;
 - Mathematical problem-solving models;
 - Communicating to a variety of audiences;
 - Classroom management in project-based classrooms;
 - Instructional strategies for the inclusive classroom;
 - Computational thinking;
 - Mathematical and technological modeling.
 5. Completion of a STEM field experience of a minimum of 30 contact hours that may be met through the following:
 - Completing a STEM research experience;
 - Participating in a STEM internship at a STEM business or informal education organization; or
 - Leading a STEM extracurricular activity.
- b. 5-8.*
- (1) Authorization. The holder of this endorsement is authorized to teach science, mathematics, and integrated STEM courses in grades five through eight.
 - (2) Program requirements. Be the holder of a 5-12 science, mathematics, or industrial technology endorsement or 5-8 middle school mathematics or science endorsement.
 - (3) Content.
 1. Completion of a minimum of 12 semester hours of college-level science.
 2. Completion of a minimum of 12 semester hours of college-level math (or the completion of Calculus I) to include coursework in computer programming.
 3. Completion of a minimum of 3 semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:
 - Engineering and technological design courses for education majors;
 - Technology or engineering content coursework.
 4. Completion of a minimum of 6 semester hours of required coursework in STEM curriculum and methods to include the following essential concepts and skills:
 - Comparing and contrasting the nature and goals of each of the STEM disciplines;
 - Promoting learning through purposeful, authentic, real-world connections;
 - Integration of content and context of each of the STEM disciplines;

- Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);
 - Curriculum and standards mapping;
 - Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;
 - Assessment of integrative learning approaches;
 - Information literacy skills in STEM;
 - Processes of science and scientific inquiry;
 - Mathematical problem-solving models;
 - Communicating to a variety of audiences;
 - Classroom management in project-based classrooms;
 - Instructional strategies for the inclusive classroom;
 - Computational thinking;
 - Mathematical and technological modeling.
5. Completion of a STEM field experience of a minimum of 30 contact hours that may be met through the following:
- Completing a STEM research experience;
 - Participating in a STEM internship at a STEM business or informal education organization; or
 - Leading a STEM extracurricular activity.
- c. *Specialist K-12.*
- (1) Authorization. The holder of this endorsement is authorized to serve as a STEM specialist in kindergarten and grades one through twelve.
- (2) Program requirements.
1. The applicant must have met the requirements for a standard Iowa teaching license and a teaching endorsement in mathematics, science, engineering, industrial technology, or agriculture.
2. The applicant must hold a master's degree in math, science, engineering or technology or another area with at least 12 hours of college-level science and at least 12 hours of college-level math (or completion of Calculus I) to include coursework in computer programming.
- (3) Content.
1. Completion of a minimum of 3 semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:
- Engineering and technological design courses for education majors;
 - Technology or engineering content coursework.
2. Completion of 9 semester hours in professional development to include the following essential concepts and skills:
- STEM curriculum and methods:
 - Comparing and contrasting the nature and goals of each of the STEM disciplines;
 - Promoting learning through purposeful, authentic, real-world connections;
 - Integration of content and context of each of the STEM disciplines;
 - Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);
 - Curriculum/standards mapping;
 - Assessment of integrative learning approaches;
 - Information literacy skills in STEM;
 - Processes of science/scientific inquiry;
 - Mathematical problem-solving models;
 - Classroom management in project-based classrooms;
 - Instructional strategies for the inclusive classroom;
 - Computational thinking;
 - Mathematical and technological modeling.

- STEM experiential learning:
 - Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;
 - STEM research experiences;
 - STEM internship at a STEM business or informal education organization;
 - STEM extracurricular activity;
 - Communicating to a variety of audiences.
- Leadership in STEM:
 - STEM curriculum development and assessment;
 - Curriculum mapping;
 - Assessment of student engagement;
 - STEM across the curriculum;
 - Research on best practices in STEM;
 - STEM curriculum accessibility for all students.

3. Completion of an internship/externship professional experience or prior professional experience in STEM for a minimum of 90 contact hours.

13.28(33) Multioccupations.

a. Completion of any 5-12 endorsement and, in addition thereto, coursework in foundations of career and technical education and coordination of cooperative programs, and work experience which meets one of the following:

- (1) Four thousand hours of career and technical experience in two or more careers; or
- (2) Two hundred forty hours of work experience or externships in two or more careers and two or more years of teaching experience at the PK-12 level.

b. The multioccupations endorsement also authorizes the holder to supervise students in cooperative programs, work-based learning programs, and similar programs in which the student is placed in school-sponsored, on-the-job situations.

c. Holders of the career and technical authorization are eligible to apply to add this endorsement.

13.28(34) CTE information technology. 5-12.

a. *Authorization.* The holder of this endorsement is authorized to teach career and technical education (CTE) information technology, CTE computer science, and CTE computer programming courses.

b. *Program requirements.* Applicants must hold a valid Iowa teaching license with at least one other teaching endorsement.

c. *Content.* A minimum of 12 semester hours of computer science to include coursework in the following:

- (1) Data representation and abstraction to include primitive data types, static and dynamic data structures, and data types and stores.
- (2) Designing, developing, testing and refining algorithms to include proficiency in two or more programming paradigms.
- (3) Systems and networks to include operating systems, networks, mobile devices, and machine-level data representation.

d. *Methods course.* A content area methods course is required pursuant to 13.29(1). The course should include the following effective teaching and learning strategies for information technology:

- (1) Curriculum development including recognizing and defining real-world computational problems; computing concepts and constructs; developing and using abstractions; creating, testing, and refining computational artifacts; and problem-solving strategies in computer science.
- (2) Project-based methodologies that support active and authentic learning, fostering an inclusive computing culture, collaborative groupings, and opportunities for creative and innovative thinking.
- (3) Communication about computing including multiple forms of media.
- (4) Digital citizenship including the social, legal, ethical, safe and effective use of computer hardware, software, peripherals, and networks.

e. CTE methods.

(1) A minimum of six semester hours of career and technical curriculum and methods to include:

1. Foundations of career and technical education.
2. Methods of career and technical education.
3. Evaluation and assessment of career and technical programs.

(2) The CTE methods coursework is not required if the educator holds another career and technical endorsement.

f. Waiver of coursework requirements. During the first year of implementation, the coursework requirements may be waived if the practitioner demonstrates relevant content knowledge mastery and successful teaching experience in this endorsement area through criteria established by the board of educational examiners.

13.28(35) Computer science. K-8 and 5-12.

a. Authorization. The holder of this endorsement is authorized to teach selected computer science and computer programming courses.

b. Program requirements. Applicants must hold a valid Iowa teaching license with at least one additional teaching endorsement.

c. Content. A minimum of 12 semester hours of computer science to include coursework in the following:

(1) Data representation and abstraction to include primitive data types, static and dynamic data structures, and data types and stores.

(2) Designing, developing, testing and refining algorithms to include proficiency in two or more programming paradigms.

(3) Systems and networks to include operating systems, networks, mobile devices, and machine-level data representation.

d. Methods course. A content area methods course is required pursuant to 13.29(1). The course should include the following effective teaching and learning strategies for information technology:

(1) Curriculum development including recognizing and defining real-world computational problems; computing concepts and constructs; developing and using abstractions; creating, testing, and refining computational artifacts; and problem-solving strategies in computer science.

(2) Project-based methodologies that support active and authentic learning, fostering an inclusive computing culture, collaborative groupings, and opportunities for creative and innovative thinking.

(3) Communication about computing including multiple forms of media.

(4) Digital citizenship including the social, legal, ethical, safe and effective use of computer hardware, software, peripherals, and networks.

e. Computer science specialist. If the requirements in 13.28(35)“c” and “d” are met and the applicant achieves a minimum of 24 semester hours of computer science content, a computer science specialist endorsement will be granted and the additional teaching endorsement set forth in 13.28(35)“b” will not be required.

f. Waiver of coursework requirements. During the first year of implementation, the coursework requirements may be waived if the practitioner demonstrates relevant content knowledge mastery and successful teaching experience in this endorsement area through criteria established by the board of educational examiners.

13.28(36) Dyslexia specialist. K-12. The applicant must have met the requirements for the standard license and have completed at least three years of post-baccalaureate teaching experience in a K-12 setting. Applicants who have achieved dyslexia certification in another state may apply for a certification review through the Iowa reading research center.

a. Authorization. The holder of this endorsement is authorized to serve as a dyslexia specialist in kindergarten and grades 1 through 12.

b. Content. Completion of 18 semester hours in dyslexia strategies to include the following:

(1) Knowledge of dyslexia. The dyslexia specialist will have knowledge of dyslexia and:

1. Understand the tenets of the International Dyslexia Association’s definition of dyslexia, including the neurobiological nature and cognitive-linguistic correlates.

2. Identify distinguishing characteristics of dyslexia and commonly co-occurring disorders, including dysgraphia, dyscalculia, attention deficit hyperactivity disorder, expressive language disorders, receptive language disorders, and others.

3. Recognize that dyslexia may present differently along a continuum of severity and impact depending upon age, grade, and compensatory factors.

4. Understand federal and state laws that pertain to dyslexia, including use of the word “dyslexia” within school settings and documentation.

5. Understand common misconceptions regarding characteristics of and interventions for dyslexia.

(2) Psychology of language and reading. The dyslexia specialist will understand the highly complex processes by which children learn to speak, read, and write, including language acquisition, linguistics, and the structure of written language, including phonological processing, phonics, orthography, morphology, syntax, and semantics, as well as the relationship of these components to typical and atypical reading and writing development and instruction for students with dyslexia.

(3) Curriculum and instruction. The dyslexia specialist will use appropriate instructional approaches and materials including preparation in more than one curriculum as well as integrated, comprehensive, explicit, and systematic literacy instruction to support student learning in reading and writing, including the following:

1. Instruction utilizing multisensory and multimodal strategies (visual, auditory, kinesthetic, and tactile), systematic and cumulative instruction, direct instruction, diagnostic and prescriptive teaching, as well as synthetic and analytic instruction.

2. Instructional approaches supported by the science of reading for the following areas: phonological processing, phonics, fluency, comprehension, vocabulary, spelling, and writing.

3. Creation of a dyslexia-friendly learning environment (within or outside the regular classroom) utilizing evidence-based accommodations and modifications to meet the needs of students with dyslexia, including appropriate interventions, remediation, assistive technology, and classroom accommodations for students with dyslexia.

4. Use of data to determine effectiveness of the instruction and curriculum along with student responsiveness to it.

(4) Assessment, diagnosis, and evaluation. The dyslexia specialist will be confident using a variety of formal assessment tools and practices to evaluate students’ reading and writing abilities in a variety of domains. The dyslexia specialist will:

1. Demonstrate an understanding of the literature and research related to assessments and their purposes (including the strengths and limitations of assessments) and assessment tools for screening, diagnosis, progress monitoring, and measuring outcomes.

2. Demonstrate an understanding of the signs and symptoms of reading difficulties, including but not limited to dyslexia; and also demonstrate an understanding of norms and student benchmarks.

3. Select, administer, and interpret assessments for specific purposes, including screening students at risk for dyslexia and identifying students who display a profile of dyslexia, and:

- Understand the features of standardized norm-referenced assessments.
- Understand the importance of selecting reliable and valid assessments to evaluate typical and atypical reading development.
- Interpret various scores derived from standardized norm-referenced and criterion-referenced assessments.

4. Use assessment information to plan and evaluate instruction, including appropriate interventions, remediation, assistive technology, and classroom accommodations for students with dyslexia and other difficulties. This will include the use of multiple data sources for analysis, instructional planning, examining the effectiveness of specific intervention practices, and examining students’ responses to interventions.

5. Communicate assessment results and implications to a variety of audiences, including staff, parents, and students.

6. Understand appropriate IEP goals and Section 504 plans for students who display characteristics of dyslexia.

(5) Practicum in dyslexia. The dyslexia specialist will participate in elementary and secondary practicum experiences with instructors who have experience with and are currently serving students who display characteristics of dyslexia. The practicum must include:

1. Supervised administration of norm-referenced literacy assessments.
2. Practice composing a report of literacy assessment results that will include interpretation of the results and instructional recommendations.
3. Supervised delivery of systematic, explicit, and multisensory intervention for students with characteristics of dyslexia.
4. Practice composing a report of students' response to intervention.

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282—13.29(272) Adding, removing or reinstating a teaching endorsement.

13.29(1) Adding an endorsement. After the issuance of a teaching license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

a. Options. To add an endorsement, the applicant must follow one of these options:

(1) Option 1. Receive the Iowa teacher education institution's recommendation that the current approved program requirements for the endorsement have been met.

(2) Option 2. Receive verification from the Iowa teacher education institution that the minimum state requirements for the endorsement have been met in lieu of the institution's approved program.

(3) Option 3. Apply for a review of the transcripts by the board of educational examiners' staff to determine if all Iowa requirements have been met. The applicant must submit documentation that all of the Iowa requirements have been met by filing transcripts and supporting documentation for review. The fee for the transcript evaluation is in 282—Chapter 12. This fee shall be in addition to the fee for adding the endorsement.

b. Additional requirements for adding an endorsement.

(1) In addition to meeting the requirements for Iowa licensure, applicants for endorsements shall have completed a methods class appropriate for teaching the general subject area and grade levels of the endorsement added.

(2) Practitioners who are adding a K-8 endorsement and have not student taught at the elementary level shall complete a teaching practicum in an elementary setting. Applicants seeking the early childhood or elementary endorsements set forth in rule 282—13.26(272) must complete the required field experience and teaching practicum specific to the endorsement desired.

(3) Practitioners who are adding a 5-12 endorsement and have not student taught at the secondary level shall complete a teaching practicum in a high school setting.

(4) Practitioners holding the K-8 endorsement in the content area of the 5-12 endorsement being added may satisfy the requirement for the secondary methods class and the teaching practicum by completing all required coursework and presenting verification of competence. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level. This verification of competence may be submitted at any time during the term of the Class B license. The practitioner must obtain a Class B license while practicing with the 5-12 endorsement.

(5) Applicants seeking a board of educational examiners transcript review must have achieved a C- grade or higher in the courses that will be considered for an endorsement.

13.29(2) Removal of an endorsement; reinstatement of removed endorsement.

a. Removal of an endorsement. A practitioner may remove an endorsement from the practitioner's license as follows:

(1) To remove an endorsement, the practitioner shall meet the following conditions:

1. A practitioner who holds a standard or master educator license is eligible to request removal of an endorsement from the license if the practitioner has not taught in the subject or assignment area of the endorsement in the five years prior to the request for removal of the endorsement, and

2. The practitioner must submit a notarized written application form furnished by the board of educational examiners to remove an endorsement at the time of licensure renewal (licensure renewal is limited to one calendar year prior to the expiration date of the current license), and

3. The application must be signed by the superintendent or designee in the district in which the practitioner is under contract. The superintendent's signature shall serve as notification and acknowledgment of the practitioner's intent to remove an endorsement from the practitioner's license. The absence of the superintendent's or designee's signature does not impede the removal process.

(2) The endorsement shall be removed from the license at the time of application.

(3) If a practitioner is not employed and submits an application, the provisions of 13.29(2) "a"(1)"3" shall not be required.

(4) If a practitioner submits an application that does not meet the criteria listed in 13.29(2) "a"(1)"1" to "3," the application will be rendered void and the practitioner will forfeit the processing fee.

(5) The executive director has the authority to approve or deny the request for removal. Any denial is subject to the appeal process set forth in rule 282—11.35(272).

b. Reinstatement of a removed endorsement.

(1) If the practitioner wants to add the removed endorsement at a future date, all coursework for the endorsement must be completed within the five years preceding the application to add the endorsement.

(2) The practitioner must meet the current endorsement requirements when making application.

[ARC 8248B, IAB 11/4/09, effective 10/12/09; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2584C, IAB 6/22/16, effective 7/27/16]

282—13.30(272) Licenses—issue and expiration dates, corrections, duplicates, and fraud.

13.30(1) Issue and expiration dates on original license. A license is valid only from and after the date of issuance. Licenses, authorizations, certificates, and statements of professional recognition will expire on the last day of the practitioner's birth month after the term of the license unless otherwise specified. If the expiration date is changed by rule, the change may be retroactive.

13.30(2) Correcting licenses. If a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board's mailing of a license, a corrected license shall be issued without charge to the licensee. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.

13.30(3) Duplicate licenses. Upon application and payment of the fee set out in 282—Chapter 12, a duplicate license shall be issued.

13.30(4) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

[ARC 3979C, IAB 8/29/18, effective 10/3/18]

These rules are intended to implement Iowa Code chapter 272.

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² January 6, 2021, effective date of 13.6 [ARC 5303C, Item 1] delayed until the adjournment of the 2021 session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 2020.

CHAPTER 14
SPECIAL EDUCATION ENDORSEMENTS
[Prior to 1/14/09, see Educational Examiners Board[282] Ch 15]

282—14.1(272) Special education teaching endorsements.

14.1(1) Program requirements.

- a. The applicant must meet the requirement in rules 282—13.1(272) and 282—13.5(272).
- b. The applicant must complete pre-student teaching field-based experiences in special education.
- c. Student teaching. Each applicant for an Iowa license with a special education instructional endorsement must file evidence of completing an approved student teaching program in special education. This experience must be full-time in an approved special education classroom. An approved special education classroom is one which is recognized by the state in terms of the respective state rules for special education. This special education student teaching experience shall qualify for each special education instructional endorsement sought on an original application for Iowa licensure if at the same grade level.
- d. The applicant must meet the requirements to add an endorsement in rule 282—13.29(272).

14.1(2) Adding special education instructional endorsements to Iowa licenses.

- a. After the issuance of a practitioner license, an individual may add other special education instructional endorsements to that license upon proper application provided current requirements for the specific endorsement(s) have been met.
- b. If an applicant is seeking to add a special education instructional endorsement at the same level, elementary or secondary, as other endorsements held, the student teaching component set out in the rules for added endorsement areas is not required.
- c. If the applicant holds the K-8 special education endorsement for the 5-12 endorsement area being added, the applicant may satisfy the requirements for the secondary methods class and the student teaching experience by completing all the required coursework and presenting verification of competence of teaching a minimum of two years while properly licensed. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level.
- d. An updated license with expiration date unchanged from the original or renewed license will be prepared. Licensure procedures and requirements are set out in 282—Chapter 13.
[ARC 8248B, IAB 11/4/09, effective 10/12/09]

282—14.2(272) Specific requirements. For each of the following teaching endorsements in special education, the applicant must have completed 24 semester hours in special education.

14.2(1) Early childhood—special education.

- a. This endorsement authorizes instruction at the PK-K level only for instructional special education programs without regard to the instructional model.
- b. The applicant must present evidence of having completed the following program requirements.
 - (1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.
 - (2) Characteristics of learners. Preparation which includes an overview of current trends in educational programming and theories of child development, both typical and atypical; the identification of pre-, peri-, and postnatal development and factors that affect children's development and learning. Identification of specific disabilities, including the etiology, characteristics, and classification of common disabilities in young children. Application of the knowledge of cultural and linguistic diversity and the significant sociocultural context for the development of and learning in young children.
 - (3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology

used in the assessment of various disabling conditions. Assess children's cognitive, social-emotional, communication, motor, adaptive, and aesthetic development; and select, adapt, and administer assessment instruments and procedures for specific sensory and motor disabilities.

(4) **Methods and strategies.** Methods and strategies which include numerous models to plan and implement appropriate curricular and instructional practices based on knowledge of individual children, the family, the community, and curricular goals and content. Select intervention curricula and methods for children with specific disabilities including motor, sensory, health, communication, social-emotional and cognitive disabilities. Implement developmentally and functionally appropriate individual and group activities using a variety of formats; develop and implement an integrated curriculum that focuses on special education children from birth to age six, and incorporate information and strategies from multiple disciplines in the design of intervention strategies. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) **Managing student behavior and social interaction skills.** Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) **Communication and collaborative partnerships.** Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) **Student teaching.** Student teaching in a PK-K special education program.

14.2(2) Instructional strategist I: mild and moderate.

a. Option 1—K-8 mild and moderate. This endorsement authorizes instruction in all K-8 mild and moderate instructional special education programs without regard to the instructional model. An applicant for this option must complete the following requirement and must hold a regular education endorsement. See rule 282—13.26(272). The applicant must present evidence of having completed the following program requirements.

(1) **Foundations of special education.** The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

(2) **Characteristics of learners.** Preparation which includes various etiologies of mild and moderate disabilities, an overview of current trends in educational programming for mild and moderate disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming, and includes the general developmental, academic, social, career and functional characteristics of individuals with mild and moderate disabilities as the characteristics relate to levels of instructional support required, and the psychological and social-emotional characteristics of individuals with mild and moderate disabilities.

(3) **Assessment, diagnosis and evaluation.** Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of the mildly and moderately disabled, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at the K-8 level. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Student teaching. Student teaching in a K-8 mild and moderate special education program.

b. Option 2—K-8 mild and moderate. To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-8 or 5-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out in paragraph 14.2(2) "a."

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

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

(3) Remedial reading.

(4) Elementary curriculum methods and material, unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).

(5) Methods and materials for teaching elementary mathematics.

c. Option 1—5-12 mild and moderate. This endorsement authorizes instruction in all 5-12 mild and moderate instructional special education programs without regard to the instructional model. An applicant for this option must complete the following requirements and must hold a regular education endorsement. See rule 282—13.28(272). The applicant must present evidence of having completed the following program requirements.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of mild and moderate disabilities, an overview of current trends in educational programming for mild and moderate disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming, and includes the general developmental, academic, social, career and functional characteristics of individuals with mild and moderate disabilities as the characteristics relate to levels of instructional support required, and the psychological and social-emotional characteristics of individuals with mild and moderate disabilities.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any

specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of the mildly and moderately disabled, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at the 5-12 level. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals with mild and moderate disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in a 5-12 mild and moderate special education program.

d. Option 2—5-12 mild and moderate. To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-8 or 5-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out in paragraph 14.2(2)“c.”

(1) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children, unless completed as part of the professional education core.

(2) Adolescent reading or secondary content area reading.

(3) Secondary or adolescent reading diagnosis and remediation.

(4) Methods and materials for teaching adolescents with mathematics difficulties or mathematics for the secondary level special education teacher.

(5) Secondary methods unless completed as part of the professional education core.

14.2(3) Instructional strategist II: behavior disorders/learning disabilities. This endorsement authorizes instruction in programs serving students with behavior disorders and learning disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. Characteristics of learners. Preparation which includes various etiologies of behavior disorders and learning disabilities, an overview of current trends in educational programming for students with behavior disorders and learning disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from age 5 to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with behavior disorders and learning disabilities including the impact of such characteristics on classroom learning as well as associated domains such as social functioning and at-risk behaviors

which may lead to involvement with the juvenile justice or mental health system. Preparation in the psychological and social-emotional characteristics of individuals with behavior disorders and learning disabilities must include the major social characteristics of individuals with behavior disorders and the effects of dysfunctional behavior on learning, and the social and emotional aspects of individuals with learning disabilities including social imperceptiveness and juvenile delinquency. Physical development, physical disability and health impairments as they relate to the development and behavior of students with behavior disorders and the medical factors influencing individuals with learning disabilities, including intelligence, perception, memory and language development.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of behavior and learning disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with behavior and learning disabilities, including career, vocational and transitional support to postsecondary settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(4) Instructional strategist II: intellectual disabilities. This endorsement authorizes instruction in programs serving students with intellectual disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. Characteristics of learners. Preparation which includes various etiologies of intellectual disabilities, an overview of current trends in educational programming for students with intellectual disabilities, educational alternatives and related services, and the importance of the multidisciplinary

team in providing more appropriate educational programming from age 5 to age 21. Preparation must also provide for an overview of the general developmental, academic, social, career and functional characteristics of individuals with intellectual disabilities as the characteristics relate to levels of instructional support required. This preparation must include the causes and theories of intellectual disabilities and implications and preventions; the psychological characteristics of students with intellectual and developmental disabilities, including cognition, perception, memory, and language development; medical complications and implications for student support needs, including seizure management, tube feeding, catheterization and CPR; and the medical aspects of intellectual disabilities and their implications for learning. The social-emotional aspects of intellectual disabilities, including adaptive behavior, social competence, social isolation and learned helplessness.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of intellectually disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Proficiency in adapting age-appropriate curriculum to facilitate instruction within the general education setting, to include partial participation of students in tasks, skills facilitation, collaboration, and support from peers with and without disabilities; the ability to select and use augmentative and alternative communications methods and systems. An understanding of the impact of speech-language development on behavior and social interactions. Approaches to create positive learning environments for individuals with special needs and approaches to utilize assistive devices for individuals with special needs. The design and implementation of age-appropriate instruction based on the adaptive skills of students with intellectual disabilities; integrate selected related services into the instructional day of students with intellectual disabilities. Knowledge of culturally responsive functional life skills relevant to independence in the community, personal living, and employment. Use of appropriate physical management techniques including positioning, handling, lifting, relaxation, and range of motion and the use and maintenance of orthotic, prosthetic, and adaptive equipment effectively.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with intellectual disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with intellectual disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(5) Instructional strategist II: physical disabilities. This endorsement authorizes instruction in programs serving students with physical disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. Characteristics of learners. Preparation which includes various etiologies and characteristics of physical disabilities across the life span, secondary health care issues that accompany specific physical disabilities, an overview of current trends in educational programming for students with physical disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from age 5 to age 21. Preparation must also provide for an overview of the general developmental, academic, social, career and functional characteristics of individuals with physical disabilities as the characteristics relate to levels of instructional support required.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. Methods and strategies.

(1) Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of physically disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(2) Research-supported instructional practices, strategies, and adaptations necessary to accommodate the physical and communication characteristics of students with physical disabilities, including appropriate assistive technology and alternative positioning to permit students with physical disabilities full participation and access to the general curriculum as well as social environments. Design and implement an instructional program that addresses instruction in independent living skills, vocational skills, and career education for students with physical disabilities and instructional strategies for medical self-management procedures by students.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with physical disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge

of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with physical disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(6) K-8 mildly disabled endorsement. This endorsement authorizes instruction to mildly disabled children who require special education program adaptations while assigned to a regular classroom for basic instructional purposes, or mildly disabled students placed in a special education class who receive part of their instruction in a regular classroom, or mildly disabled students requiring specially designed instruction while assigned to a regular classroom for basic instructional purposes. To fulfill the requirements for this endorsement, the applicant must:

a. Hold a regular education instruction endorsement at the elementary level. For the elementary level, this is the general elementary classroom endorsement.

b. Hold one of the following endorsements at the elementary level: learning disabilities, mild to moderate intellectual disabilities, behavioral disorders, multicategorical resource room or multicategorical-special class with integration.

14.2(7) 5-12 mildly disabled endorsement. This endorsement authorizes instruction to mildly disabled children who require special education program adaptations while assigned to a regular classroom for basic instructional purposes, or mildly disabled students placed in a special education class who receive part of their instruction in a regular classroom, or mildly disabled students requiring specially designed instruction while assigned to a regular classroom for basic instructional purposes. To fulfill the requirements for this endorsement, the applicant must:

a. Hold a regular education instruction endorsement at the secondary level (grades 5-12).

b. Hold one of the following endorsements at the secondary level: learning disabilities, mild to moderate intellectual disabilities, behavioral disorders, multicategorical resource room or multicategorical-special class with integration.

NOTE: These endorsements are designed for programs serving primarily mildly disabled students. Students who have sensory disorders are not included as “mildly disabled.”

14.2(8) Deaf or hard of hearing endorsement.

a. Option 1. This endorsement authorizes instruction in programs serving students with hearing loss from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). An applicant for this option must complete the following requirements and must have completed an approved program in teaching the deaf or hard of hearing from a recognized Iowa or non-Iowa institution and must hold a regular education endorsement. See 282—Chapter 13.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of hearing loss, an overview of current trends in educational programming for students with hearing loss and educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from birth to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with hearing loss, including the impact of such characteristics on classroom learning. Knowledge of the anatomy and physiology of the hearing mechanism and knowledge of the development of secondary senses when a hearing disorder is present, effect of hearing loss on learning experiences, psychological aspects of hearing loss, and effects of medications on the hearing system. Preparation in the psychological and social-emotional characteristics of individuals

with hearing loss to include the major social characteristics of individuals with hearing loss and the effects of this disability on learning, and the social and emotional aspects of individuals with hearing loss. Physical development and potential health implications as they relate to the development and behavior of students with hearing loss. Components of linguistic and nonlinguistic communication used by individuals who are deaf or hard of hearing and communication modes used by and with individuals who are deaf or hard of hearing, including current theories of language development in individuals who are deaf or hard of hearing.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities, including necessary alternative assessment techniques arising out of the nature of the disability and medical reports and other related diagnostic information. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of students who are deaf or hard of hearing and sources of specialized materials for individuals who are deaf or hard of hearing. These strategies must include knowledge of teaching academic subjects and language and speech to students who are deaf or hard of hearing and have knowledge of American Sign Language. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals who are deaf or hard of hearing, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from birth to age 21. This preparation must include alternatives for teaching skills and strategies to individuals who are deaf or hard of hearing who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Strategies for teaching technology skills and other instructional aids for students who are deaf or hard of hearing.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities, including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals who are deaf or hard of hearing, including career, vocational and transitional support to postsecondary settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

b. Option 2. An applicant who holds an endorsement in deaf or hard of hearing issued in another state or who is eligible for such an endorsement but who does not also hold or is not eligible for a regular education endorsement in Iowa (see 282—Chapter 13) must meet the following basic requirements in addition to those set out in paragraph 14.2(8)“a.”

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

- (2) Methods and materials of teaching elementary language arts.
- (3) Methods and materials of teaching elementary reading.
- (4) Elementary curriculum methods and materials unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).
- (5) Methods and materials of teaching elementary mathematics.
- (6) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children unless completed as part of the professional education core.
- (7) Adolescent literacy or secondary content area reading.
- (8) Secondary methods unless completed as part of the professional education core.

14.2(9) Visually disabled endorsement.

a. Option 1. This endorsement authorizes instruction in programs serving students with visual disabilities from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). An applicant for this option must complete the following requirements and must have completed an approved program in visual disabilities from a recognized Iowa or non-Iowa institution and must hold a regular education endorsement. See 282—Chapter 13.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of visual impairment, an overview of current trends in educational programming for students with visual disabilities and educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from birth to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with visual disabilities, including the impact of such characteristics on classroom learning. Development of the human visual system, development of secondary senses when vision is impaired, effect of visual disability on development, impact of visual disability on learning and experiences, psychological aspects of visual disability, and effects of medications on the visual system. Preparation in the psychological and social-emotional characteristics of individuals with visual disabilities to include the major social characteristics of individuals with visual disabilities and the effects of this disability on learning, and the social and emotional aspects of individuals with visual disabilities. Physical development and potential health impairments as they relate to the development and behavior of students with visual disabilities.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities, including necessary alternative assessment techniques arising out of the nature of the disability and medical reports and other related diagnostic information. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of visually disabled students and sources of curriculum materials for individuals with disabilities. These strategies must include knowledge of teaching Braille reading and writing, the skill in teaching handwriting and signature writing to individuals with low vision or who are blind, listening and compensatory auditory skills and typing and keyboarding skills. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with visual disabilities, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from birth to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with visual disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Strategies for teaching technology skills, other instructional aids for visually disabled students, strategies for teaching organization and study skills, tactual and perceptual skills, adapted physical and recreational skills and

strategies for promoting self-advocacy in individuals with visual disabilities and for structured pre-cane orientation and mobility assessment and instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities, including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals with visual disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

b. Option 2. An applicant who holds an endorsement for visually disabled issued in another state or who is eligible for such an endorsement but who does not also hold or is not eligible for a regular education endorsement in Iowa (see 282—Chapter 13) must meet the following basic requirements in addition to those set out in paragraph 14.2(9)“a.”

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

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

(3) Methods and materials of teaching elementary reading.

(4) Elementary curriculum methods and materials unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).

(5) Methods and materials of teaching elementary mathematics.

(6) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children unless completed as part of the professional education core.

(7) Adolescent literacy or secondary content area reading.

(8) Secondary methods unless completed as part of the professional education core.

14.2(10) K-12 instructional strategist I and II: all. This endorsement authorizes instruction for students in K-12 mild and moderate instructional special education programs, students with behavior disorders and learning disabilities, and students with intellectual disabilities, from age 5 to age 21. The applicant must present evidence of having completed the following program requirements.

a. Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds. A review of special education law, including progress monitoring, data collection, and individualized education plans.

b. Characteristics of learners. Preparation which includes various etiologies of disabilities, an overview of current trends in educational programming for students with disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from age 5 to age 21. This preparation must include the psychological characteristics of students with disabilities, including classroom learning, cognition, perception, memory, and language development; medical complications including seizure management, tube feeding, catheterization and CPR; the social-emotional aspects of disabilities including adaptive behavior, social competence, social isolation, and learned helplessness; and the social and

emotional aspects including dysfunctional behaviors, mental health issues, at-risk behaviors, social imperceptiveness, and juvenile justice.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions. A review of special education law, including progress monitoring, data collection, and individualized education plans.

d. Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Proficiency in adapting age-appropriate curriculum to facilitate instruction within the general education setting, to include partial participation of students in tasks, skills facilitation, collaboration, and support from peers with and without disabilities; the ability to select and use augmentative and alternative communications methods and systems. An understanding of the impact of speech-language development on behavior and social interactions. Approaches to create positive learning environments for individuals with special needs and approaches to utilize assistive devices for individuals with special needs. The design and implementation of age-appropriate instruction based on the adaptive skills of students with disabilities; integrate selected related services into the instructional day of students with disabilities. Knowledge of culturally responsive functional life skills relevant to independence in the community, personal living, and employment. Use of appropriate physical management techniques including positioning, handling, lifting, relaxation, and range of motion and the use and maintenance of orthotic, prosthetic, and adaptive equipment effectively.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with intellectual disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with intellectual disabilities, including career, vocational and transitional support to postsecondary settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in special education programs across the age levels of this endorsement.

[ARC 0450C, IAB 11/14/12, effective 12/19/12; ARC 1884C, IAB 2/18/15, effective 3/25/15; see Delay note at end of chapter and Nullification note at end of chapter; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 5802C, IAB 7/28/21, effective 9/1/21; ARC 6868C, IAB 2/8/23, effective 3/15/23]

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- ¹ March 25, 2015, effective date of ARC 1884C [14.2(10), 14.2(11)] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held March 6, 2015.
- ² See SJR 2006 of the 2016 Session of the Eighty-sixth General Assembly regarding nullification of 14.2(10) and 14.2(11) (ARC 1884C, IAB 2/18/15). Nullified language removed IAC Supplement 4/27/16.

CHAPTER 18
ISSUANCE OF ADMINISTRATOR LICENSES AND ENDORSEMENTS

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

282—18.1(272) All applicants desiring an Iowa administrator license.

18.1(1) Definitions.

“*Coursework*” means requirements completed for semester hour credit through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“*Degree*” means a specific qualification earned through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“*Recognized non-Iowa institution*” means an institution that is state-approved and is accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“*State-approved*” means a program for administrator preparation approved for state licensure.

18.1(2) Administrator licenses. Administrator licenses are issued upon application filed on a form provided by the board of educational examiners and upon completion of the background check requirements set forth in rule 282—13.1(272).

18.1(3) Temporary permits. The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check and registries and records check set forth in 282—paragraphs 13.1(2) “*b*” and “*c*.” The temporary permit shall serve as evidence of the applicant’s authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

[ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 2631C, IAB 7/20/16, effective 8/24/16; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—18.2(272) Applicants from recognized Iowa institutions. Rescinded ARC 2016C, IAB 6/10/15, effective 7/15/15.

282—18.3(272) Applicants from recognized non-Iowa institutions. Rescinded IAB 9/9/09, effective 10/14/09.

282—18.4(272) General requirements for an administrator license.

18.4(1) Eligibility for applicants who have completed a teacher preparation program. Applicants for the administrator license must first comply with the requirements for all Iowa practitioners set out in 282—Chapter 13.

18.4(2) Specific requirements for an initial administrator license for applicants who have completed a teacher preparation program. An initial administrator license valid for a minimum of one year with an expiration date of June 30 may be issued to an applicant who:

- a. Has completed a state-approved PK-12 principal and PK-12 supervisor of special education program (see subrule 18.9(1)); and
- b. Has completed an evaluator approval program; and
- c. Provides a recommendation for the specific license and administrator endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed; and
- d. Has met the experience requirement set forth for the desired administrator endorsement; and
- e. Is not subject to any pending disciplinary proceedings in any state; and
- f. Complies with all requirements with regard to application processes and payment of licensure fees.

18.4(3) *Eligibility for applicants who have completed a professional service endorsement program.* Applicants for the administrator license must first comply with the requirements set out in 282—Chapter 27.

18.4(4) *Specific requirements for an initial administrator license for applicants who have completed a professional service endorsement.* An initial administrator license valid for one year may be issued to an applicant who:

- a. Is the holder of an Iowa professional service license; and
- b. Has three years of experience in an educational setting in the professional service endorsement area or has six years of professional service and administrative experience provided that at least two years are professional service experience; and
- c. Has completed a state-approved PK-12 principal and PK-12 supervisor of special education program (see subrule 18.9(1)); and
- d. Is assuming a position as a PK-12 principal and PK-12 supervisor of special education (see subrule 18.9(1)) for the first time or has one year of out-of-state or nonpublic administrative experience; and
- e. Has completed the required coursework in human relations, cultural competency, diverse learners and reading instruction set forth in 281—subrules 79.15(2) and 79.15(3); and
- f. Has completed the professional education core in 281—paragraphs 79.15(5) “a” to “k”; and
- g. Has completed an evaluator approval program.

[ARC 8248B, IAB 11/4/09, effective 10/12/09; ARC 8958B, IAB 7/28/10, effective 9/1/10; ARC 1326C, IAB 2/19/14, effective 3/26/14; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2631C, IAB 7/20/16, effective 8/24/16; ARC 3196C, IAB 7/5/17, effective 8/9/17; ARC 3979C, IAB 8/29/18, effective 10/3/18]

282—18.5(272) Specific requirements for a professional administrator license. A professional administrator license valid for five years may be issued to an applicant who does all of the following:

18.5(1) Completes the requirements in rule 282—18.4(272).

18.5(2) Successfully meets each standard pursuant to rule 281—83.10(284A).

18.5(3) Completes one year of administrative experience in an Iowa public school and completes the administrator mentoring program while holding an administrator license, or successfully completes two years of administrative experience in a nonpublic or out-of-state school setting.

[ARC 8248B, IAB 11/4/09, effective 10/12/09; ARC 0607C, IAB 2/20/13, effective 3/27/13; ARC 5322C, IAB 12/16/20, effective 1/20/21]

282—18.6(272) Specific requirements for an administrator prepared out of state. An applicant seeking Iowa licensure who completes an administrator preparation program from a recognized non-Iowa institution shall verify the requirements of rules 282—18.1(272) and 282—18.4(272) through a transcript review. Applicants must hold and submit a copy of a valid or expired regular administrator certificate or license in another state, exclusive of a temporary, emergency or substitute license or certificate.

18.6(1) *Administrator exchange license.* A one-year nonrenewable administrator exchange license may be issued to an individual who:

- a. Has met a minimum of 75 percent of the coursework requirements for administrative licensure but has some coursework deficiencies.
- b. Is eligible for and has applied for a regular valid and current out-of-state administrator license and is waiting for the processing of the license.
- c. Has not completed the approved evaluator training requirement.
- d. Has less than five years of verified experience as a school administrator while holding a valid administrator license.

18.6(2) *Conversion.* Each applicant who receives the one-year administrator exchange license must complete any identified coursework deficiencies in order to be eligible for an initial administrator license or a professional administrator license in Iowa. Any coursework deficiencies must be completed for college credit, with the exception of the human relations component which may be taken for licensure renewal credit through an approved provider.

18.6(3) License without deficiencies. An applicant under this rule shall be granted an Iowa administrator license and will not be subject to coursework deficiencies if the applicant provides a valid or expired administrator certificate or license in good standing without pending disciplinary action from another state exclusive of a temporary, emergency or substitute license or certificate. Endorsements shall be granted based on comparable Iowa endorsements, and endorsement requirements may be waived in order to grant the most comparable endorsement. Holders of an Iowa administrator exchange license issued prior to June 16, 2022, may submit a new application if the requirements in this rule would have been met at the time of their initial application.

[ARC 8141B, IAB 9/9/09, effective 10/14/09; ARC 9383B, IAB 2/23/11, effective 3/30/11; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 3196C, IAB 7/5/17, effective 8/9/17; ARC 3829C, IAB 6/6/18, effective 7/11/18; ARC 5321C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6245C, IAB 3/23/22, effective 4/27/22; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—18.7(272) Specific requirements for a Class A extension license.

18.7(1) A nonrenewable Class A extension license valid for one year may be issued to an applicant based on an expired Iowa professional administrator license. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

18.7(2) The holder of an expired professional administrator license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the renewal requirements for the administrator license held shall be required to secure the signature of the superintendent or designee before the Class A extension license will be issued. If the superintendent does not meet the renewal requirements, the superintendent shall be required to secure the signature of the school board president before the license will be issued.

[ARC 9384B, IAB 2/23/11, effective 3/30/11; ARC 9453B, IAB 4/6/11, effective 5/11/11; ARC 0564C, IAB 1/23/13, effective 2/27/13; ARC 2016C, IAB 6/10/15, effective 7/15/15]

282—18.8(272) Specific requirements for a Class B license. A nonrenewable Class B license valid for two years may be issued to an individual under the following conditions:

18.8(1) Endorsement in progress. The individual has a valid Iowa teaching license but is seeking to obtain an administrator endorsement. A Class B license may be issued if requested by an employer and the individual seeking this endorsement has completed at least 75 percent of the requirements leading to completion of all requirements for this endorsement.

18.8(2) Experience requirement.

a. Principal endorsement. For the principal endorsement, the applicant must meet the experience requirement set forth in subparagraph 18.9(1)“c”(1).

b. Superintendent endorsement. For the superintendent endorsement, the applicant must meet the experience requirement set forth in subrule 18.10(3).

18.8(3) Request for exception. Rescinded IAB 2/23/11, effective 3/30/11.

[ARC 9385B, IAB 2/23/11, effective 3/30/11; ARC 2631C, IAB 7/20/16, effective 8/24/16]

282—18.9(272) Area and grade levels of administrator endorsements.

18.9(1) PK-12 principal and PK-12 supervisor of special education.

a. Authorization. The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade twelve, a supervisor of instructional special education programs for children from birth to the age of 21, and a supervisor of support for special education programs for children from birth to the age of 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. Program requirements.

(1) Degree—master’s.

(2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. Candidates who successfully complete a building-level educational leadership preparation program understand and demonstrate the capacity to promote the current and future success and well-being of each student and adult by applying the knowledge, skills, and commitments necessary to:

1. Collaboratively lead, design, and implement a school mission, vision, and process for continuous improvement that reflects a core set of values and priorities that include data use, technology, equity, diversity, digital citizenship, and community (Mission, Vision, and Improvement).

2. Advocate for ethical decisions and cultivate and enact professional norms (Ethics and Professional Norms).

3. Develop and maintain a supportive, equitable, culturally responsive, and inclusive school culture (Equity, Inclusiveness, and Cultural Responsiveness) to include meeting the needs of all learners, as well as ensuring teachers meet the needs of diverse learners, including:

- Students from diverse ethnic, racial and socioeconomic backgrounds.
- Students with disabilities, including preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement.
- Students who are struggling with literacy, including those with dyslexia.
- Students who are gifted and talented.
- English language learners.
- Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors including, but not limited to, behaviors related to substance abuse.

4. Evaluate, develop, and implement coherent systems of curriculum, instruction, data systems, supports, and assessment (Learning and Instruction).

5. Strengthen student learning, support school improvement, and advocate for the needs of their school and community (Community and External Leadership).

6. Improve management, communication, technology, school-level governance, and operation systems to develop and improve data-informed and equitable school resource plans and to apply laws, policies, and regulations, including a dedicated course in current issues of special education administration (Operations and Management).

7. Build the school's professional capacity, engage staff in the development of a collaborative professional culture, and improve systems of staff supervision, evaluation, support, and professional learning, including the completion of Iowa evaluator training (Building Professional Capacity).

8. Successfully complete an internship under the supervision of knowledgeable, expert practitioners that engages candidates in multiple and diverse school settings and provides candidates with coherent, authentic, and sustained opportunities to synthesize and apply the knowledge and skills pursuant to this section in ways that approximate the full range of responsibilities required of building-level leaders and enable them to promote the current and future success and well-being of each student and adult in their school, including planned experiences in elementary and secondary administration with special education administration.

c. Other.

(1) The applicant must have had three years of teaching experience at the early childhood through grade twelve level while holding a valid license or have had six years of teaching and administrative experience while holding a valid license, provided that at least two years are teaching experience.

(2) Graduates from out-of-state institutions who are seeking initial Iowa licensure and the PK-12 principal and PK-12 supervisor of special education endorsement must meet the coursework requirements for an Iowa teaching license in addition to the experience requirements.

18.9(2) PK-8 principal—out-of-state applicants. Rescinded IAB 7/20/16, effective 8/24/16.

18.9(3) 5-12 principal—out-of-state applicants. Rescinded IAB 7/20/16, effective 8/24/16.

[ARC 0872C, IAB 7/24/13, effective 8/28/13; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2631C, IAB 7/20/16, effective 8/24/16; ARC 5322C, IAB 12/16/20, effective 1/20/21]

282—18.10(272) Superintendent/AEA administrator.

18.10(1) Authorization. The holder of this endorsement is authorized to serve as a superintendent from the prekindergarten level through grade twelve or as an AEA administrator. NOTE: This

authorization does not permit general teaching, school service, or administration at any level except that level or area for which the practitioner holds the specific endorsement(s).

18.10(2) Program requirements.

a. Degree—specialist (or its equivalent: A master’s degree plus at least 30 semester hours of planned graduate study in administration beyond the master’s degree).

b. Content. Through completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements, candidates who successfully complete a district-level educational leadership preparation program understand and demonstrate the capacity to promote the current and future success and well-being of each student and adult by applying the knowledge, skills, and commitments necessary to:

(1) Collaboratively lead, design, and implement a district mission, vision, and process for continuous improvement that reflects a core set of values and priorities that include data use, technology, values, equity, diversity, digital citizenship, and community (District Mission, Vision, and Improvement).

(2) Advocate for ethical decisions and cultivate professional norms and culture (Ethics and Professional Norms).

(3) Develop and maintain a supportive, equitable, culturally responsive, and inclusive district culture (Equity, Inclusiveness, and Cultural Responsiveness) to include meeting the needs of all learners, as well as ensuring teachers meet the needs of diverse learners, including:

1. Students from diverse ethnic, racial and socioeconomic backgrounds.

2. Students with disabilities, including preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement.

3. Students who are struggling with literacy, including those with dyslexia.

4. Students who are gifted and talented.

5. English language learners.

6. Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors including, but not limited to, behaviors related to substance abuse.

(4) Evaluate, design, cultivate, and implement coherent systems of curriculum, instruction, data systems, supports, assessment, and instructional leadership (Learning and Instruction).

(5) Understand and engage families, communities, and other constituents in the work of schools and the district and to advocate for district, student, and community needs (Community and External Leadership).

(6) Develop, monitor, evaluate, and manage data-informed and equitable district systems for operations, resources, technology, and human capital management, including instructional and noninstructional district support services (Operations and Management).

(7) Cultivate relationships, lead collaborative decision making and governance, and represent and advocate for district needs in broader policy conversations (Policy, Governance, and Advocacy).

(8) Successfully complete an internship under the supervision of knowledgeable, expert practitioners that engages candidates in multiple and diverse district settings and provides candidates with coherent, authentic, and sustained opportunities to synthesize and apply the knowledge and skills identified in this section in ways that approximate the full range of responsibilities required of district-level leaders and enable them to promote the current and future success and well-being of each student and adult in their district.

18.10(3) Administrative experience. The applicant must meet one of the following:

a. The applicant must have had three years of experience as a building principal while holding a valid license.

b. The applicant must have three years of administrative experience in any of the following areas: PK-12 regional education agency administrative experience, PK-12 state department of education

administrative experience, PK-12 educational licensing board administrative experience or PK-12 building/district administrative experience while holding a valid Iowa administrator license.

c. The applicant must have six years of teaching and administrative experience, provided that at least two years are teaching experience and one year is administrative experience, all while holding a valid license.

[ARC 8248B, IAB 11/4/09, effective 10/12/09; ARC 0872C, IAB 7/24/13, effective 8/28/13; ARC 1167C, IAB 11/13/13, effective 12/18/13; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 5322C, IAB 12/16/20, effective 1/20/21]

282—18.11(272) Director of special education of an area education agency.

18.11(1) Authorization. The holder of this endorsement is authorized to serve as a director of special education of an area education agency. Assistant directors are also required to hold this endorsement.

18.11(2) Program requirements.

a. *Degree—master's.*

b. *Endorsement.* An applicant must hold or meet the requirements for one of the following:

- (1) PK-12 principal and PK-12 supervisor of special education (see rule 282—18.9(272));
- (2) Supervisor of special education—instructional (see rule 282—15.5(272));
- (3) Professional service administrator (see 282—subrule 27.3(5)); or
- (4) A letter of authorization for special education supervisor issued prior to October 1, 1988.

c. *Content.* An applicant must have completed a sequence of courses and experiences of at least 24 additional semester hours to include the following:

(1) Understand and demonstrate the capacity to advocate for ethical decisions and cultivate professional norms and culture.

(2) Develop and maintain a safe, supportive, equitable, culturally responsive, and inclusive district culture.

(3) Collaboratively lead, design, and implement a district mission, vision, and process for continuous improvement that reflects a core set of values and priorities that include data use, technology, values, equity, diversity, digital citizenship, and community.

(4) Knowledge of current issues in special education and special education administration.

(5) Knowledge of special education school law and legislative and public policy issues affecting children and families.

(6) Knowledge of the powers and duties of the director of special education of an area education agency as delineated in Iowa Code section 273.5.

(7) Practicum in administration and supervision of special education programs.

d. *Experience.* An applicant must meet the experience requirement set forth in 18.10(3).

18.11(3) Other.

a. *Option 1: Instructional.* An applicant must meet the requirements for one special education teaching endorsement and have three years of teaching experience in special education.

b. *Option 2: Support.* An applicant must meet the practitioner licensure requirements for one of the following endorsements and have three years of experience as a:

- (1) School audiologist;
- (2) School psychologist;
- (3) School social worker; or
- (4) Speech-language pathologist.

NOTE: An individual holding a statement of professional recognition is not eligible for the director of special education of an area education agency endorsement.

[ARC 9075B, IAB 9/8/10, effective 10/13/10; ARC 2631C, IAB 7/20/16, effective 8/24/16; ARC 5322C, IAB 12/16/20, effective 1/20/21]

282—18.12(272) Specific requirements for a Class E emergency license. A nonrenewable Class E emergency license valid for one year may be issued to an individual as follows.

18.12(1) Expired license. Based on an expired Class A, Class B, or administrator exchange license, the holder of the expired license shall be eligible to receive a Class E license upon application and submission of all required materials.

18.12(2) Application. The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. The Class E license will be denied if the applicant has not completed any coursework during the term of the Class A, Class B, or administrator exchange license unless extenuating circumstances are verified. [ARC 0874C, IAB 7/24/13, effective 8/28/13; ARC 2016C, IAB 6/10/15, effective 7/15/15]

282—18.13 Reserved.

282—18.14(272) Endorsements.

18.14(1) After the issuance of an administrator license, an individual may add other administrator endorsements to that license upon proper application, provided current requirements for that endorsement, as listed in rules 282—18.9(272) through 282—18.11(272), have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

18.14(2) The applicant must follow one of these options:

- a. Identify with a recognized Iowa administrator preparing institution, meet that institution's current requirements for the endorsement desired, and receive that institution's recommendation; or
- b. Identify with a recognized non-Iowa administrator preparation institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought. A transcript evaluation will also be required.

[ARC 3633C, IAB 2/14/18, effective 3/21/18]

282—18.15(272) Licenses—issue dates, corrections, duplicates, and fraud.

18.15(1) Issue date on original license. A license is valid only from and after the date of issuance.

18.15(2) Correcting licenses. If a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board's mailing of a license, a corrected license shall be issued without charge to the licensee. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.

18.15(3) Duplicate licenses. Upon application and payment of the fee set out in 282—Chapter 12, a duplicate license shall be issued.

18.15(4) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

These rules are intended to implement Iowa Code chapter 272.

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[Filed ARC 6870C (Notice ARC 6677C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 22
AUTHORIZATIONS

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 19]

282—22.1(272) Coaching authorization. A coaching authorization allows an individual to coach any sport in a middle school, junior high school, or high school.

22.1(1) Application process. Any person interested in the coaching authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at www.boee.iowa.gov, or from institutions or agencies offering approved courses or contact hours.

22.1(2) Requirements. Applicants for the coaching authorization shall have completed the following requirements:

a. Content requirements. Requirements completed for semester hour credit must be through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. Applicants must complete the following content requirements:

(1) Successful completion of 1 semester credit hour or 10 contact hours in a course relating to knowledge and understanding of the structure and function of the human body in relation to physical activity.

(2) Successful completion of 1 semester credit hour or 10 contact hours in a course relating to knowledge and understanding of human growth and development of children and youth in relation to physical activity.

(3) Successful completion of 2 semester credit hours or 20 contact hours in a course relating to knowledge and understanding of the prevention and care of athletic injuries and medical and safety problems relating to physical activity.

(4) Successful completion of 1 semester credit hour or 10 contact hours relating to knowledge and understanding of the techniques and theory of coaching interscholastic athletics.

(5) Beginning on or after July 1, 2000, each applicant for an initial coaching authorization shall have successfully completed 1 semester credit hour or 15 contact hours in a course relating to the theory of coaching which must include at least 5 contact hours relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

(6) Successful completion of the concussion training approved by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union.

(7) Successful completion of CPR training as verified by a current certificate.

b. Minimum age or diploma. Applicants must have attained a minimum of 18 years. Applicants must also:

(1) Possess a minimum of:

1. A high school diploma,
2. A graduate equivalent diploma, or
3. Home school completion verified by the executive director; or

(2) Be 20 years of age or older.

c. Background check. Applicants must complete the background check requirements set forth in rule 282—13.1(272).

22.1(3) Validity. The coaching authorization shall be valid for five years.

22.1(4) Renewal. The authorization may be renewed upon application and verification of successful completion of:

a. Renewal activities. Applicants for renewal of a coaching authorization must:

(1) Successfully complete five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Additionally, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

(2) Annually complete the concussion training approved by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union. Completion of the concussion training may be waived if the applicant is not serving as a coach. Attendance at the annual concussion training may be used for a maximum of one planned activity/course required in 22.1(4)“a”(1).

(3) Complete child and dependent adult abuse trainings. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse trainings pursuant to 282—subrule 20.3(4). These trainings combined may be used for a total of one planned activity/course required in 22.1(4)“a”(1).

(4) Provide a current certificate of CPR training.

b. A one-year extension of the applicant’s coaching authorization may be issued if all requirements for the renewal of the coaching authorization have not been met. The applicant must complete the concussion training approved by the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union before serving as a coach. The one-year extension is not renewable. The fee for this extension is found in 282—Chapter 12.

22.1(5) *Revocation and suspension.* Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the coaching authorization. An ethics complaint may be filed if a practitioner begins coaching a sport without current concussion training.

22.1(6) *Approval of courses.* Each institution of higher education, private college or university, merged area school or area education agency wishing to offer the semester credit or contact hours for the coaching authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

22.1(7) *Transitional coaching authorization.*

a. *Application process.* Any person interested in the transitional coaching authorization shall submit a complete application verifying the requirements listed below. Application materials are available from the board of educational examiners online at www.boee.iowa.gov.

b. *Requirements.* Applicants for the transitional coaching authorization shall have completed each of the following requirements:

(1) Verification that the applicant has not completed the coursework required for a coaching authorization.

(2) Verification of an offer of a coaching position by a school or a consortium of schools that will additionally verify that:

1. No fully authorized coaching candidates were found after a diligent search,

2. The transitional coach will be supervised by a licensed athletic director, administrator, or other practitioner serving in a supervisory role during the first two weeks of employment, and

3. The supervisor will evaluate the performance of the transitional coach using an evaluation form available on the school’s website.

(3) Successful completion of an approved shortened course of training related to the code of professional rights and responsibilities, practices, and ethics specifically developed for transitional coaches.

(4) Successful completion of the child and dependent adult abuse trainings pursuant to 282—subrule 20.3(4).

(5) Successful completion of a nationally recognized concussion in youth sports training course.

(6) Verification that the applicant has attained a minimum age of 21 years.

(7) Verification of completion of the background check requirements set forth in rule 282—13.1(272).

c. *Validity.* The transitional coaching authorization shall be valid for no more than one year and shall be valid only in the school or consortium of schools making the offer of the coaching position.

d. *Renewal.* The transitional coaching authorization is nonrenewable.

e. Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall apply to holders of a transitional coaching authorization. An ethics complaint may be filed if a practitioner begins coaching a sport without current concussion training. [ARC 0865C, IAB 7/24/13, effective 8/28/13; ARC 0866C, IAB 7/24/13, effective 8/28/13; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 2588C, IAB 6/22/16, effective 7/27/16; ARC 2793C, IAB 11/9/16, effective 12/14/16; see Delay note at end of chapter; ARC 4634C, IAB 8/28/19, effective 10/2/19; ARC 5321C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—22.2(272) Substitute authorization. A substitute authorization allows an individual to substitute in grades PK-12 for no more than 10 consecutive days in a 30-day period in one job assignment for a regularly assigned teacher who is absent, except in the driver's education classroom. A school district administrator may file a written request with the board for an extension of the 10-day limit in one job assignment in a 30-day period on the basis of documented need and benefit to the instructional program. The executive director or appointee will review the request and provide a written decision either approving or denying the request.

22.2(1) Application process. Any person interested in the substitute authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at www.boee.iowa.gov or from institutions or agencies offering approved courses or contact hours. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

a. Requirements. Applicants for the substitute authorization shall meet the following requirements:

(1) Authorization program. Applicants must complete a board of educational examiners-approved substitute authorization program consisting of the following components and totaling a minimum of 15 clock hours:

1. Classroom management. This component includes an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

2. Strategies for learning. This component includes understanding and using a variety of learning strategies to encourage students' development of critical thinking, problem solving, and performance skills.

3. Diversity. This component includes understanding how students differ in their approaches to learning and creating learning opportunities that are equitable and are adaptable to diverse learners.

4. Ethics. This component includes fostering relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development and to be aware of the board's rules of professional practice and competent performance.

(2) Degree or certificate. Applicants must have achieved a minimum of an associate's degree or 60 semester hours of college coursework.

(3) Minimum age. Applicants must have attained a minimum age of 21 years.

(4) Background check. Applicants must complete the background check requirements set forth in rule 282—13.1(272).

b. Validity. The substitute authorization shall be valid for five years.

c. Renewal. The authorization may be renewed upon application and verification of successful completion of:

(1) Renewal units. Applicants for renewal of the substitute authorization must provide verification of a minimum of two licensure renewal units or semester hours of renewal credits.

(2) Child and dependent adult abuse trainings. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse trainings pursuant to 282—subrule 20.3(4).

22.2(2) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the substitute authorization.

22.2(3) Approval of courses. Each institution of higher education, private college or university, merged area school or area education agency wishing to offer the semester credit or contact hours

for the substitute authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

[ARC 7745B, IAB 5/6/09, effective 6/10/09; ARC 0865C, IAB 7/24/13, effective 8/28/13; ARC 1087C, IAB 10/16/13, effective 11/20/13; ARC 1720C, IAB 11/12/14, effective 12/17/14; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 2528C, IAB 5/11/16, effective 6/15/16; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 4634C, IAB 8/28/19, effective 10/2/19; ARC 4635C, IAB 8/28/19, effective 10/2/19; ARC 5303C, IAB 12/2/20, effective 1/6/21; see Delay note at end of chapter; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6126C, IAB 1/12/22, effective 2/16/22; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—22.3(272) School business official authorization.

22.3(1) Application for authorization. Effective July 1, 2012, a person who is interested in a school business official authorization will be required to apply for an authorization.

22.3(2) Responsibilities. A school business official authorization allows an individual to perform, supervise, and be responsible for the overall financial operation of a local school district.

22.3(3) Application process. Any person interested in the school business official authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at www.boee.iowa.gov, or from institutions or agencies offering approved courses or contact hours. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

22.3(4) Specific requirements for an initial school business official authorization. Applicants for an initial school business official authorization shall have completed the following requirements:

a. Education. Applicants must have a minimum of an associate's degree in business or accounting or 60 semester hours of coursework in business or accounting of which 9 semester hours must be in accounting.

If the applicant has not completed 9 semester hours in accounting but has 6 or more semester hours in accounting, the applicant may be issued a temporary school business official authorization valid for one year.

(1) A temporary initial school business official authorization may be issued if requested by the district. A district administrator may file a written request with the executive director for an exception to the minimum content requirements on the basis of documented need and benefit to the district. The executive director will review the request and provide a written decision either approving or denying the request.

(2) If the 9 semester hours of accounting are not completed within the time allowed, the applicant will not be eligible for the initial school business official authorization.

(3) If the applicant received a temporary school business official authorization, then the initial school business official authorization shall not exceed one year.

b. Minimum age. Applicants must have attained a minimum age of 18 years.

c. Background check. Applicants must complete the background check requirements set forth in rule 282—13.1(272).

22.3(5) Specific requirements for a standard school business official authorization.

a. A standard school business official authorization will be valid for three years and may be issued to an applicant who meets the requirements set forth in subrules 22.3(3) to 22.3(5).

b. Requirements.

(1) Applicants must complete 9 semester hours or the equivalent (1 semester hour is equivalent to 15 contact hours) in an approved program in the following areas/competencies:

1. Accounting (GAAP) concepts: fund accounting, account codes, Uniform Financial Accounting.

2. Accounting cycles: budgets, payroll/benefits, purchasing/inventory, cash, receipts, disbursements, financial reporting, investments.

3. Technology: management of accounting systems, proficiency in understanding and use of systems technology and related programs.

4. Regulatory: Uniform Administrative Procedures Manual, school policies and procedures, administrative procedures, public records law, records management, school law, employment law, construction and bidding law.

5. Personal skills: effective communication and interpersonal skills, ethical conduct, information management, ability to analyze and evaluate, ability to recognize and safeguard confidential information, and accurate and timely performance.

(2) Applicants shall demonstrate completion of or competency in the following:

1. A board of educational examiners ethics program.

2. A mentoring program as described in 281—Chapter 81.

3. The promotion of the value of the school business official's fiduciary responsibility to the taxpayer.

22.3(6) Validity.

a. The initial school business official authorization shall be valid for two years.

b. The standard school business official authorization shall be valid for three years.

22.3(7) Renewal. The authorization may be renewed upon application and verification of successful completion of:

a. Renewal activities.

(1) In addition to the child and dependent adult abuse mandatory reporter training listed below, the applicant for renewal must complete 4 semester hours of credit or the equivalent contact hours (1 semester hour is equivalent to 15 contact hours) within the three-year licensure period.

(2) Failure to complete requirements for renewal will require a petition for waiver from the board.

b. Child and dependent adult abuse mandatory reporter trainings. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse mandatory reporter trainings pursuant to 282—subrule 20.3(4).

22.3(8) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the school business official authorization.

22.3(9) Approval of courses. Each institution of higher education, private college or university, merged area school or area education agency and professional organization that wishes to offer the semester credit hours or contact hours for the school business official authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

[ARC 9572B, IAB 6/29/11, effective 8/3/11; ARC 0869C, IAB 7/24/13, effective 8/28/13; ARC 1719C, IAB 11/12/14, effective 12/17/14; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 3196C, IAB 7/5/17, effective 8/9/17; ARC 4634C, IAB 8/28/19, effective 10/2/19; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—22.4(272) Licenses—issue dates, corrections, duplicates, fraud, and reciprocity.

22.4(1) Issue date on original authorization. An authorization is valid only from and after the date of issuance.

22.4(2) Correcting authorization. If an applicant notifies board staff of a typographical or clerical error on the authorization within 30 days of the date of the board's mailing of an authorization, a corrected authorization shall be issued without charge to the applicant. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of an authorization, a corrected authorization shall be issued upon receipt of the fee for issuance of a duplicate authorization. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of an authorization, or errors in the type of authorization issued.

22.4(3) Duplicate authorization. Upon application and payment of the fee set out in 282—Chapter 12, a duplicate authorization shall be issued.

22.4(4) Fraud in procurement or renewal of authorization. Fraud in procurement or renewal of an authorization or falsifying records for authorization purposes will constitute grounds for filing a complaint with the board of educational examiners.

22.4(5) Reciprocity. Applicants who hold a license, certificate, or authorization under this chapter from at least one other issuing jurisdiction in another state will not be subject to additional coursework if the following requirements have been met:

a. The applicant holds a valid or expired equivalent license in good standing from another state without pending disciplinary action, exclusive of a temporary or emergency certificate.

b. The applicant provides verification of passing the mandated assessment(s) in the state in which the applicant is currently licensed, if applicable.

[ARC 9572B, IAB 6/29/11, effective 8/3/11; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—22.5(272) Preliminary native language teaching authorization.

22.5(1) Authorization. The preliminary native language teaching authorization is provided to noneducators entering the education profession to teach their native language as a foreign language in grades K-6 or grades 7-12.

22.5(2) Application process. Any person interested in the preliminary native language teaching authorization shall submit the application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.5(3) Requirements.

a. The applicant must have completed a baccalaureate degree through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

b. Background check. The applicant must complete the background check requirements set forth in rule 282—13.1(272).

c. The applicant must obtain a recommendation from a school district administrator verifying that the school district wishes to hire the applicant. Before the applicant is hired, the school district administrator must verify that a diligent search was completed to hire a fully licensed teacher for the position.

d. During the term of the authorization, the applicant must complete board-approved training in the following:

(1) Methods and techniques of teaching. Develop skills to use a variety of learning strategies that encourage students' development of critical thinking, problem solving, and performance skills. The methods course must include specific methods and techniques of teaching a foreign language and must be appropriate for the level of endorsement.

(2) Curriculum development. Develop an understanding of how students differ in their approaches to learning and create learning opportunities that are equitable and adaptable to diverse learners.

(3) Measurement and evaluation of programs and students. Develop skills to use a variety of authentic assessments to measure student progress.

(4) Classroom management. Develop an understanding of individual and group motivation and behavior which creates a learning environment that encourages positive social interactions, active engagement in learning, and self-motivation.

(5) Code of ethics. Develop an understanding of how to foster relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development and become aware of the board's rules of professional practice and code of ethics.

(6) Diversity training for educators. Develop an understanding of and sensitivity to the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society, including preparation that contributes to the education of individuals with disabilities and the gifted and talented.

e. The applicant must be assigned a mentor by the hiring school district. The mentor must have four years of teaching experience in a related subject area.

f. Assessment of native language. The applicant must provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education. The cut score may not be waived by the board.

22.5(4) Validity. This authorization is valid for three years. No conditional licenses may be issued to applicants holding the preliminary native language teaching authorization. No additional endorsement areas may be added.

22.5(5) Renewal. The authorization is nonrenewable.

22.5(6) Conversion. The preliminary native language teaching authorization may be converted to a native language teaching authorization. The applicant must provide official transcripts verifying the completion of the coursework required in 22.5(3)“d.”

22.5(7) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the preliminary native language teaching authorization. If a school district hires an applicant without a valid preliminary native language teaching authorization, a complaint may be filed against the teacher and the superintendent of the school district.

22.5(8) Approval of courses. Each institution of higher education, private college or university, community college or area education agency wishing to offer the training for the preliminary native language teaching authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

[ARC 0562C, IAB 1/23/13, effective 2/27/13; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 3196C, IAB 7/5/17, effective 8/9/17; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—22.6(272) Native language teaching authorization.

22.6(1) Authorization. The native language teaching authorization allows an individual to teach the individual’s native language as a foreign language in grades K-8 or grades 5-12.

22.6(2) Application process. Any person interested in the native language teaching authorization shall submit an application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.6(3) Requirements. Applicants must:

a. Hold a preliminary native language teaching authorization and meet the conversion requirements for the native language teaching authorization, or

b. Hold an Iowa teaching license and provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education. The cut score may not be waived by the board. Applicants who hold an Iowa teaching license must also obtain a recommendation from a school district administrator verifying that the school district wishes to hire the applicant. Before the applicant is hired, the school district administrator must verify that a diligent search was completed to hire a fully licensed teacher with the proper endorsement for the position.

22.6(4) Validity. This authorization is valid for five years. No Class B licenses may be issued to an applicant holding the native language teaching authorization unless a teaching license is additionally obtained. No additional endorsement areas may be added to the native language teaching authorization.

22.6(5) Renewal.

a. Applicants must meet the renewal requirements set forth in rule 282—20.3(272) and 282—subrule 20.5(2).

b. A one-year extension may be issued if all requirements for the renewal of the native language teaching authorization have not been met. This one-year extension is not renewable.

22.6(6) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the native language teaching authorization. If a school district hires an applicant without the proper licensure or endorsement, a complaint may be filed.

[ARC 1721C, IAB 11/12/14, effective 12/17/14]

282—22.7(272) School administration manager authorization.

22.7(1) *Application for authorization.* Effective July 1, 2014, a person who is interested in a school administration manager authorization will be required to apply for an authorization. The following persons must obtain an authorization:

- a. A Model 1 SAM, a person who is hired to be a full-time SAM and who is authorized to assume the responsibilities of a SAM;
- b. A Model 2 SAM, a person whose position in the school is reconfigured to include the responsibilities of being a SAM and is authorized as a SAM; and
- c. A Model 3 SAM, a person who is a secretary/administrative assistant and is also authorized as a SAM.

22.7(2) *Responsibilities.* A school administration manager authorization allows an individual to assist a school administrator in performing noninstructional, administrative-type duties.

22.7(3) *Application process.* Any person interested in the school administration manager authorization shall submit to the board of educational examiners an application which includes a written verification of employment from a school district administrator. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.7(4) *Specific requirements for an initial school administration manager authorization.* Applicants for an initial school administration manager authorization shall have completed the following requirements:

- a. *Education.* Applicants must hold a high school degree or general equivalency diploma.
- b. *Minimum age.* Applicants must have attained a minimum age of 18 years.
- c. *Background check.* Applicants must complete the background check requirements set forth in rule 282—13.1(272).

22.7(5) *Specific requirements for a standard school administration manager authorization.* The initial school administration manager authorization shall be converted to the standard school administration manager authorization provided the following requirements are met.

a. *Training.* A school administration manager shall attend an approved training program at the onset of the individual's hire as a school administration manager. The training for school administration managers is set forth in 281—subrule 82.7(2).

b. *Experience.* An applicant shall complete one year of experience as a school administration manager in an Iowa school. The supervising administrator shall verify this experience and the applicant's completion of the required competencies.

c. *Competencies.* Applicants shall demonstrate completion of or competency in the following:

- (1) Each school administration manager shall demonstrate competence in technology appropriate to the school administration manager position. The school administration manager will:
 1. Become proficient in the use of the approved time-tracking software tool;
 2. Schedule the administrator's time using the approved software, update and reconcile the calendar daily, and attempt to pre-calendar the administrator at or above the administrator's goal; and
 3. Regularly schedule, review, and reflect with the administrator on the graphs and data provided through the software.

(2) Each school administration manager shall demonstrate appropriate personal skills. The school administration manager:

1. Is an effective communicator with all stakeholders, including but not limited to colleagues, community members, parents, and students;
 2. Works effectively with employees, students, and stakeholders.
 3. Maintains confidentiality when dealing with student, parent, and staff issues;
 4. Clearly understands the administrator's philosophy of behavior expectations and consequences;
- and
5. Maintains an environment of mutual respect, rapport, and fairness.

22.7(6) *Validity.*

- a. The initial school administration manager authorization shall be valid for three years.
- b. The standard school administration manager authorization shall be valid for five years.

22.7(7) *Renewal.*

a. The initial school administration manager authorization may be renewed once if the applicant has not previously had employment as a school administration manager but can at the time of application provide evidence of employment as a school administration manager.

b. The standard school administration manager authorization may be renewed upon application and verification of successful completion of the following:

(1) *Renewal activities.* The applicant for renewal must complete three semester hours of credit through authorized SAM training or online training courses approved by the board of educational examiners in collaboration with the department of education.

(2) *Child and dependent adult abuse mandatory reporter trainings.* Every renewal applicant must submit documentation of completion of the child and dependent adult abuse mandatory reporter trainings pursuant to 282—subrule 20.3(4).

22.7(8) Extension. A one-year extension of the school administration manager authorization may be issued if the applicant does not meet the renewal requirements. The applicant must secure the signature of the superintendent or designee before the extension will be issued.

22.7(9) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the school administration manager authorization.

22.7(10) Approval of courses. Each institution of higher education, private college or university, community college, area education agency and professional organization that wishes to offer the semester credit hours for the school administration manager authorization must submit course descriptions for each offering to the board of educational examiners for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board of educational examiners.

[ARC 1086C, IAB 10/16/13, effective 11/20/13; ARC 1542C, IAB 7/23/14, effective 8/27/14; ARC 1721C, IAB 11/12/14, effective 12/17/14; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 4634C, IAB 8/28/19, effective 10/2/19]

282—22.8(272) iJAG authorization.

22.8(1) Authorization. The Iowa jobs for America's graduates (iJAG) authorization is provided to noneducators entering the education profession to teach iJAG coursework in grades 7-12.

22.8(2) Application process. Any person interested in the iJAG authorization shall submit the application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.8(3) Requirements.

a. The applicant must have completed a baccalaureate degree.

b. *Background check.* The applicant must complete the background check requirements set forth in rule 282—13.1(272).

c. The applicant must have completed a board of educational examiners-approved iJAG training program consisting of the following components and totaling a minimum of 40 clock hours annually:

(1) *Instructional methods.* Develop skills to effectively deliver project-based instruction in the iJAG core competencies.

(2) *Curriculum.* Develop skills to effectively develop curriculum, projects and other educational opportunities consistent with the goals of iJAG.

(3) *Measurement and evaluation of programs and students.* Analyze student data, administer testing, and monitor the following: basic skills, individualized development plans, attendance, graduation requirements, and course enrollment.

(4) *Code of ethics.* Develop an understanding of how to foster relationships with parents, students, school colleagues, and organizations in the larger community to support students' learning and development and become aware of the board's rules of professional practice and code of ethics.

(5) *Diversity training for educators.* Develop an understanding of and sensitivity to the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society, including preparation that contributes to the education of individuals with disabilities and the gifted and talented.

d. The applicant must obtain a recommendation from an iJAG administrator verifying that the organization wishes to hire the applicant.

e. The applicant must be assigned a mentor by the hiring school district. The mentor must have four years of teaching experience.

22.8(4) *Validity.* This authorization is valid for five years. No Class B license or license based on administrative decision may be issued to an applicant holding the iJAG authorization unless a teaching license is additionally obtained. No additional endorsement areas may be added to the iJAG authorization.

22.8(5) *Renewal.* An applicant for renewal of the iJAG authorization must provide verification of completion of the following:

a. Required iJAG training as verified through an iJAG administrator.

b. Child and dependent adult abuse training as stated in 282—subrule 20.3(4).

22.8(6) *Revocation and suspension.* Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holder of the iJAG authorization.

[ARC 1322C, IAB 2/19/14, effective 3/26/14; ARC 1721C, IAB 11/12/14, effective 12/17/14; ARC 2230C, IAB 11/11/15, effective 12/16/15]

282—22.9(272) Requirements for the career and technical secondary authorization.

22.9(1) *Authorization.* This authorization is provided to noneducators entering the education profession to instruct in occupations and specialty fields that are recognized in career and technical service areas and career cluster areas.

22.9(2) *Application process.* Any person interested in the career and technical secondary authorization shall submit the application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

22.9(3) *Specific requirements for the initial career and technical secondary authorization.*

a. The applicant must meet the background check requirements for licensure set forth in rule 282—13.1(272).

b. The applicant must obtain a recommendation from a school district administrator verifying that the school district wishes to hire the applicant.

c. Applicants shall meet one of the following qualifications:

(1) 6,000 hours of recent and relevant experience;

(2) 4,000 hours of recent and relevant experience if the applicant holds a baccalaureate degree;

(3) 3,000 hours of recent and relevant experience if the applicant holds an associate's degree in the teaching endorsement area sought, if such a degree is considered terminal for that field of instruction;

(4) Hold a baccalaureate or graduate degree or closely related degree in the teaching endorsement area sought; or

(5) Hold a baccalaureate degree in any area of study if at least 18 of the credit hours were completed in the teaching endorsement area sought.

Recent and relevant experience shall have been accrued within the ten years prior to the date of application. Experience that does not meet these criteria may be considered at the discretion of the executive director. In subjects for which state registration, certification or licensure is required, the applicant must hold the appropriate license, registration or certificate before the initial career and technical secondary authorization or the career and technical secondary authorization will be issued.

d. The applicant must provide documentation of completion of a code of professional conduct and ethics training approved by the board of educational examiners.

e. Coursework requirements.

(1) Applicants must commit to complete the following requirements within the term of the initial authorization. Coursework must be completed for semester hour credit.

1. Coursework in the methods and techniques of career and technical education.

2. Coursework in course and curriculum development.
3. Coursework in the measurement and evaluation of programs and students.
4. An approved human relations course.
5. Coursework in the instruction of exceptional learners to include the education of individuals with disabilities and the gifted and talented.

(2) Applicants who believe that their previous college coursework meets the coursework requirements in 22.9(3)“e”(1) may have the specific requirements waived. Transcripts or other supporting data should be provided to a teacher educator at one of the institutions which has an approved teacher education program. The results of the competency determination shall be forwarded with recommendations to the board of educational examiners. Board personnel will make final determination as to the competencies mastered and cite coursework which yet needs to be completed, if any.

22.9(4) *Validity—initial authorization.* The initial career and technical secondary authorization is valid for three years.

22.9(5) *Renewal.* The initial career and technical secondary authorization may be renewed once if the candidate can demonstrate that coursework progress has been made.

22.9(6) *Conversion.* The initial career and technical secondary authorization may be converted to a career and technical secondary authorization if the applicant has met the following:

- a. Completion of the required coursework set forth in paragraph 22.9(3)“e.”
- b. Documentation of completion of a code of professional conduct and ethics training approved by the board of educational examiners. The training must be completed after the issuance of the initial authorization and no more than three years prior to the date of application.

22.9(7) *Specific requirements for the career and technical secondary authorization.*

- a. This authorization is valid for five years.
- b. An applicant for this authorization must first meet the requirements for the initial career and technical secondary authorization.
- c. Renewal requirements for the career and technical secondary authorization. Applicants for renewal must meet the requirements set forth in 282—subrule 20.5(1) and 282—paragraphs 20.5(2)“a” to “d.”

22.9(8) *Revocation and suspension.* Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the initial career and technical secondary authorization or the career and technical secondary authorization. If a school district hires an applicant without a valid license or authorization, a complaint may be filed against the teacher and the superintendent of the school district.

[ARC 2015C, IAB 6/10/15, effective 7/15/15; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 5323C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—22.10(272) Activities administration authorization. An activities administration authorization allows an individual to administer any pupil activity program in a K-12 school setting.

22.10(1) *Application process.* Any person interested in the activities administration authorization shall submit an application and records of credit to the board of educational examiners for an evaluation of the required courses or contact hours. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

a. *Requirements.* Applicants for the activities administration authorization shall meet the following requirements:

- (1) Degree. A baccalaureate degree or higher in athletic administration or related field is required.
- (2) Credit hours. Applicants must complete credit hours or courses offered by the Leadership Training Institute (LTI) from the National Interscholastic Athletic Administrators Association in the following areas:

1. Successful completion of 1 semester credit hour or LTI course relating to knowledge and understanding of risk management, Title IX, sexual harassment, hazing, Americans with Disabilities Act (ADA), and employment law as they pertain to the role of the activities administrator.

2. Successful completion of 1 semester credit hour or LTI course relating to knowledge and understanding of activities administration foundations including philosophy, leadership, professional programs and activities administration principles, strategies and methods.

3. Successful completion of 1 semester credit hour or LTI course relating to knowledge and understanding of the role of the activities director in supporting and developing sports medicine programs, management of athletic player equipment, concussion assessment and proper fitting of athletic protective equipment, and sports field safety.

4. Successful completion of 1 semester credit hour or LTI course relating to knowledge and understanding of the techniques and theory of coaching concepts and strategies for interscholastic budget and concepts and strategies for interscholastic fundraising.

5. Successful completion of 1 semester credit hour or LTI course, approved by the board, relating to the assessment and evaluation of interscholastic athletic programs and personnel, dealing with challenging personalities, and administration of professional growth programs for interscholastic personnel.

6. Successful completion of the concussion training approved by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union.

b. Minimum age. Applicants must have attained a minimum age of 21 years.

c. Background check. Applicants must complete the background check requirements set forth in rule 282—13.1(272).

22.10(2) Validity. The activities administration authorization shall be valid for five years.

22.10(3) Renewal.

a. The authorization may be renewed upon application and verification of successful completion of the following renewal activities:

(1) Applicants for renewal of an activities administration authorization must complete one of the following professional development options:

1. Document attendance at one state IHSADA convention and one LTI course relating to the knowledge and understanding of professional ethics and legal responsibilities of activities administrators.

2. Complete three LTI courses.

3. Complete 2 semester hours of college credit.

4. Complete 2 licensure renewal credits from an approved provider.

(2) Applicants for renewal of an activities authorization must complete child and dependent adult abuse training as stated in 282—subrule 20.3(4).

b. A one-year extension of the applicant's activities administration authorization may be issued if all requirements for the renewal of the activities administrator authorization have not been met. The one-year extension is nonrenewable.

22.10(4) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the activities administration authorization.

[ARC 1718C, IAB 11/12/14, effective 12/17/14; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—22.11(272) Extension. For authorizations established in this chapter, a one-year extension may be issued if the applicant does not meet the requirements for authorization conversion or renewal. The applicant shall secure the signature of the superintendent or designee of the applicant's employer and shall submit all required materials before the extension will be issued. This one-year extension is nonrenewable.

This rule is intended to implement Iowa Code section 272.31.
[ARC 2121C, IAB 9/2/15, effective 10/7/15]

282—22.12(272) Orientation and mobility authorization.

22.12(1) Authorization. The holder of this authorization may teach pupils with a visual impairment (see Iowa Code section 256B.2), including those pupils who are deaf-blind.

22.12(2) Initial orientation and mobility authorization. The initial authorization is valid for three years. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. An applicant must:

- a. Hold a baccalaureate or master's degree from an approved state program in orientation and mobility or equivalent coursework.
- b. Have completed an approved human relations component.
- c. Have completed the exceptional learner program, which must include preparation that contributes to the education of students with disabilities and students who are gifted and talented.
- d. Have completed a minimum of 21 semester credit hours in the following areas:
 - (1) Medical aspects of blindness and visual impairment, including sensory motor.
 - (2) Psychosocial aspects of blindness and visual impairment.
 - (3) Child development.
 - (4) Concept development.
 - (5) History of orientation and mobility.
 - (6) Foundations of orientation and mobility.
 - (7) Orientation and mobility instructional methods and assessments.
 - (8) Techniques of orientation and mobility.
 - (9) Research or evidence-based practices in orientation and mobility.
 - (10) Professional issues in orientation and mobility, including legal issues.
- e. Have completed at least 350 hours of fieldwork and training under the supervision of the university program.
- f. Have completed the background check requirements set forth in rule 282—13.1(272).

22.12(3) Standard orientation and mobility license. An applicant must:

- a. Complete the requirements set forth in subrule 22.12(2).
- b. Verify successful completion of a three-year probationary period.

22.12(4) Renewal of orientation and mobility license. Applicants must meet the renewal requirements set forth in rule 282—20.3(272) and 282—subrule 20.5(2).

22.12(5) Exception. An orientation and mobility specialist is not eligible for any administrator license in either general education or special education.

[ARC 5322C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—22.13(272) Charter school administrator authorization.

22.13(1) Authorization. The charter school administrator authorization is only valid for service or employment as a charter school administrator.

22.13(2) Application process. Any person interested in the charter school administrator authorization shall submit an application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.13(3) Specific requirements for the initial charter school administrator authorization.

- a. The applicant must complete the background check requirements set forth in rule 282—13.1(272).
- b. The applicant must obtain a recommendation from an Iowa charter school governing board verifying that the organization wishes to hire the applicant as a charter school administrator.
- c. The applicant must provide verification of completion of child and dependent adult abuse trainings as stated in 282—subrule 20.3(4).

22.13(4) Validity—initial authorization. The initial charter school administrator authorization is valid for one year. No Class B license or license based on executive director decision may be issued to an applicant holding the initial charter school administrator authorization. No additional endorsement

areas may be added to the initial charter school administrator authorization, with the exception of evaluator approval.

22.13(5) *Renewal.* The initial charter school administrator authorization may be renewed once.

22.13(6) *Conversion.* The initial charter school administrator authorization may be converted to a charter school administrator authorization if the applicant has met the following:

a. Completion of an approved code of professional conduct and ethics training. The training must be completed after the issuance of the initial authorization and no more than three years prior to the date of application.

b. Completion of an approved evaluator course.

c. Recommendation from an Iowa charter school governing board verifying that the organization wishes to retain the applicant as a charter school administrator.

22.13(7) *Specific requirements for the charter school administrator authorization.*

a. The charter school administrator authorization is valid for five years. No Class B license or license based on executive director decision may be issued to an applicant holding the charter school administrator authorization. No additional endorsement areas may be added to the charter school administrator authorization, with the exception of evaluator approval.

b. An applicant for this authorization must first meet the requirements for the initial charter school administrator authorization.

c. An applicant for renewal of the charter school administrator authorization must provide verification of completion of child and dependent adult abuse trainings as stated in 282—subrule 20.3(4).

22.13(8) *Revocation and suspension.* Criteria of the professional practice and rules of the board of educational examiners shall be applicable to holders of the initial charter school administrator authorization and charter school administrator authorization.

[ARC 6125C, IAB 1/12/22, effective 2/16/22]

282—22.14(272) Work-based learning program supervisor authorization.

22.14(1) *Authorization.* The work-based learning program supervisor authorization is only valid for service or employment as a work-based learning program supervisor in grades 9-12.

22.14(2) *Application process.* Any person interested in the work-based learning program supervisor authorization shall submit an application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov.

22.14(3) *Specific requirements for the work-based learning program supervisor authorization.*

a. The applicant must complete the background check requirements set forth in rule 282—13.1(272).

b. The applicant must provide verification of completion of the work-based learning program supervisor course. The course must be approved by the board of educational examiners, shall not require more than 15 contact hours, shall be available over the Internet, and shall include content in the fundamentals of career education, curriculum, assessment, and the evaluation of student participation.

c. The applicant must provide verification of completion of child and dependent adult abuse trainings as stated in 282—subrule 20.3(4).

22.14(4) *Validity.* The work-based learning program supervisor authorization is valid for five years. No Class B license or license based on executive director decision may be issued to an applicant holding the work-based learning program supervisor authorization. No additional endorsement areas may be added to the work-based learning program supervisor authorization.

22.14(5) *Renewal.* An applicant for renewal of the work-based learning program supervisor authorization must provide verification of completion of child and dependent adult abuse trainings as stated in 282—subrule 20.3(4).

22.14(6) *Temporary authorization.* A one-year temporary work-based learning program supervisor authorization may be issued to applicants who have met all other requirements with the exception of

the work-based learning program supervisor course. This temporary authorization is nonrenewable and cannot be extended.

22.14(7) *Revocation and suspension.* Criteria of the professional practice and rules of the board of educational examiners shall be applicable to holders of the work-based learning program supervisor authorization.

[ARC 6869C, IAB 2/8/23, effective 3/15/23]

282—22.15(272) Content specialist authorization.

22.15(1) *Authorization.* This authorization is provided to applicants who have not completed a teacher preparation program but who hold a master's degree or higher in an endorsement area.

22.15(2) *Application process.* Any person interested in the content specialist authorization shall submit an application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

22.15(3) *Specific requirements for the initial content specialist authorization.*

a. The applicant must have completed a master's degree or higher in an endorsement area through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

b. Background check. The applicant must complete the background check requirements set forth in rule 282—13.1(272).

c. The applicant must obtain a recommendation from a school district administrator verifying that the school district wishes to hire the applicant. Before the applicant is hired, the school district administrator must verify that a diligent search was completed to hire a fully licensed teacher for the position.

d. During the term of the authorization, the applicant must complete board-approved training in the following:

(1) Methods and techniques of teaching. Develop skills to use a variety of learning strategies that encourage students' development of critical thinking, problem solving, and performance skills. The methods course must include specific methods and must be appropriate for the level of endorsement.

(2) Curriculum development. Develop an understanding of how students differ in their approaches to learning and create learning opportunities that are equitable and adaptable to diverse learners.

(3) Measurement and evaluation of programs and students. Develop skills to use a variety of authentic assessments to measure student progress.

(4) Classroom management. Develop an understanding of individual and group motivation and behavior which creates a learning environment that encourages positive social interactions, active engagement in learning, and self-motivation.

(5) Code of ethics. Develop an understanding of how to foster relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development and become aware of the board's rules of professional practice and code of ethics.

(6) Human relations. Develop an understanding of diverse groups found in a pluralistic society, including students from diverse ethnic, racial, and socioeconomic backgrounds; students with disabilities and the gifted and talented; students who are struggling with literacy, including those with dyslexia; students who are English learners; and students who are at risk of not succeeding in school.

e. The applicant must be assigned a mentor by the hiring school district. The mentor must have four years of teaching experience in a related subject area.

22.15(4) *Validity—initial authorization.* The initial content specialist authorization is valid for three years.

22.15(5) *Renewal.* The initial content specialist authorization may be renewed once if the candidate can demonstrate that coursework progress has been made.

22.15(6) Conversion. The initial content specialist authorization may be converted to a content specialist authorization if the applicant has completed the required coursework set forth in paragraph 22.15(3)“d.”

22.15(7) Specific requirements for the content specialist authorization.

a. This authorization is valid for five years.

b. An applicant for this authorization must first meet the requirements for the initial content specialist authorization.

c. Renewal requirements for the content specialist authorization. Applicants for renewal must meet the requirements set forth in 282—subrule 20.5(1) and 282—paragraphs 20.5(2)“a” through “d.”

22.15(8) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the initial career and technical secondary authorization or the career and technical secondary authorization. If a school district hires an applicant without a valid license or authorization, a complaint may be filed against the teacher and the superintendent of the school district.

[ARC 6867C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapter 272.

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- ¹ December 14, 2016, effective date of 22.1(2) "a"(7) and 22.1(4) "a"(4) [ARC 2793C, Item 2] delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held December 13, 2016.
- ² January 6, 2021, effective date of 22.2 [ARC 5303C, Item 2] delayed until the adjournment of the 2021 session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 2020.

CHAPTER 27
ISSUANCE OF PROFESSIONAL SERVICE LICENSES

282—27.1(272) Professional service license. A professional service licensee is an individual prepared to provide professional services in Iowa schools but whose preparation has not required completion of the teacher preparation coursework set forth in rule 281—79.15(256). Degrees and coursework shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. The professional service license may be issued in the following areas but does not permit service as a teacher:

1. School counselor.
2. School psychologist.
3. Speech-language pathologist.
4. Supervisor of special education (support).
5. Director of special education of an area education agency.
6. School social worker.
7. School audiologist.

[ARC 7980B, IAB 7/29/09, effective 9/2/09; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 3633C, IAB 2/14/18, effective 3/21/18; ARC 5803C, IAB 7/28/21, effective 9/1/21]

282—27.2(272) Requirements for a professional service license.

27.2(1) Initial professional service license. An initial professional service license valid for a minimum of two years with an expiration date of June 30 may be issued to an applicant for licensure to serve as a school audiologist, school psychologist, school social worker, speech-language pathologist, supervisor of special education (support), director of special education of an area education agency, or school counselor who:

- a. Has a master's degree in a recognized professional educational service area.
- b. Has completed a state-approved program which meets the requirements for an endorsement in a professional educational service area.
- c. Has completed the requirements for one of the professional educational service area endorsements.
- d. Completes the background check requirements set forth in rule 282—13.1(272).

27.2(2) Standard professional service license. A standard professional service license valid for five years may be issued to an applicant who:

- a. Completes requirements listed under paragraphs 27.2(1)“a” to “c.”
- b. Shows evidence of successful completion of a state-approved mentoring and induction program by meeting the Iowa standards as determined by a comprehensive evaluation and two years' successful service experience in an Iowa public school. In lieu of completion of an Iowa state-approved mentoring and induction program, the applicant must provide evidence of three years' successful service area experience in an Iowa nonpublic school or three years' successful service area experience in an out-of-state K-12 educational setting.

27.2(3) Renewal. Renewal requirements for this license are set out in 282—Chapter 20.

27.2(4) Professional service exchange license. For an applicant applying with out-of-state preparation under rule 282—27.1(272), a two-year nonrenewable exchange license may be issued to the applicant if the applicant has met at least 75 percent of the minimum coursework requirements for licensure but has some coursework deficiencies. At any time during the term of the exchange license, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure. An applicant under this subrule shall be granted an Iowa professional service license and will not be subject to coursework deficiencies if the applicant provides a valid or expired equivalent license in good standing from another state without pending disciplinary action exclusive of a temporary, emergency or substitute license or certificate. Endorsements shall be granted based on comparable Iowa endorsements, and endorsement requirements may be waived in order to grant the most comparable endorsement.

27.2(5) Class G license. A nonrenewable Class G license valid for one year may be issued to an individual who must complete a school counseling practicum or internship in an approved program in preparation for the professional school counselor endorsement. The Class G license may be issued under the following limited conditions:

- a. Verification of a baccalaureate degree.
- b. Verification from the institution that the individual is admitted and enrolled in a school counseling program.
- c. Verification that the individual has completed at least 75 percent of the coursework and competencies required prior to the practicum or internship.

d. Written documentation of the requirements listed in paragraphs 27.2(5) “a” to “c,” provided by the official at the institution where the individual is completing the approved school counseling program and forwarded to the Iowa board of educational examiners with the application form for licensure.

[ARC 7980B, IAB 7/29/09, effective 9/2/09; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2230C, IAB 11/11/15, effective 12/16/15; ARC 3979C, IAB 8/29/18, effective 10/3/18; ARC 5321C, IAB 12/16/20, effective 1/20/21; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6867C, IAB 2/8/23, effective 3/15/23; ARC 6870C, IAB 2/8/23, effective 3/15/23]

282—27.3(272) Specific requirements for professional service license endorsements.

27.3(1) Elementary professional school counselor.

a. *Authorization.* The holder of this endorsement has not completed the teacher preparation coursework set forth in rule 281—79.15(256) but is authorized to serve as a professional school counselor in kindergarten and grades one through eight.

b. Program requirements.

- (1) Master’s degree from an accredited institution of higher education.
- (2) Completion of an approved human relations component.
- (3) Completion of an approved exceptional learner component.

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

- (1) The competencies listed in 282—subparagraphs 13.28(26) “c”(1) to (11).
- (2) The teaching and counseling practicum. The candidate will complete a preservice supervised practicum and an internship that meet the requirements set forth in 282—subparagraph 13.28(26) “c”(12).

27.3(2) Secondary professional school counselor.

a. *Authorization.* The holder of this endorsement has not completed the teacher preparation coursework set forth in rule 281—79.15(256) but is authorized to serve as a professional school counselor in grades five through twelve.

b. Program requirements.

- (1) Master’s degree from an accredited institution of higher education.
- (2) Completion of an approved human relations component.
- (3) Completion of an approved exceptional learner component.

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

- (1) The competencies listed in 282—subparagraphs 13.28(26) “c”(1) to (11).
- (2) The teaching and counseling practicum. The candidate will complete a preservice supervised practicum and an internship that meet the requirements set forth in 282—subparagraph 13.28(26) “c”(12).

27.3(3) School psychologist.

a. *Authorization.* The holder of this endorsement is authorized to serve as a school psychologist with pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. Program requirements.

- (1) An applicant shall have completed a program of graduate study that is currently approved (or that was approved at the time of graduation) by the National Association of School Psychologists or the American Psychological Association, or be certified as a Nationally Certified School Psychologist by

the National Association of School Psychologists, in preparation for service as a school psychologist through one of the following options:

1. Completion of a master's degree with sufficient graduate semester hours beyond a baccalaureate degree to total 60; or
2. Completion of a specialist's degree of at least 60 graduate semester hours with or without completion of a terminal master's degree program; or
3. Completion of a doctoral degree program of at least 60 graduate semester hours with or without completion of a terminal master's degree program or specialist's degree program.
 - (2) The program shall include an approved human relations component.
 - (3) The program must include preparation that contributes to the education of students with disabilities and students who are gifted and talented.

c. School psychologist one-year Class A license.

(1) Requirements for a one-year Class A license. A nonrenewable Class A license valid for one year may be issued to an individual who must complete an internship or thesis as an aspect of an approved program in preparation for the school psychologist endorsement. The one-year Class A license may be issued under the following limited conditions:

1. Verification from the institution that the internship or thesis is a requirement for successful completion of the program.
2. Verification that the employment situation will be satisfactory for the internship experience.
3. Verification from the institution of the length of the approved and planned internship or the anticipated completion date of the thesis.
4. Verification of the evaluation processes for successful completion of the internship or thesis.
5. Verification that the internship or thesis is the only requirement remaining for successful completion of the approved program.

(2) Written documentation of the above requirements must be provided by the official at the institution where the individual is completing the approved school psychologist program and forwarded to the board of educational examiners with the application form for licensure.

27.3(4) Speech-language pathologist. A person who meets the requirements set forth below may be issued an endorsement. Alternatively, a person may meet the requirements for a statement of professional recognition (SPR) issued by the board of educational examiners in this area as set forth in 282—Chapter 16.

a. Authorization. The holder of this endorsement is authorized to serve as a speech-language pathologist to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. Program requirements.

(1) An applicant must hold a master's degree in speech pathology.

(2) Content. An applicant must have completed the requirements in speech pathology and in the professional education sequence, i.e., 20 semester hours including student teaching/internship as a school speech-language pathologist. Courses in the following areas may be recognized for fulfilling the 20-hour sequence:

1. Curriculum courses (e.g., reading, methods, curriculum development).
2. Foundations (e.g., philosophy of education, foundations of education).
3. Educational measurements (e.g., school finance, tests and measurements, measures and evaluation of instruction).
4. Educational psychology (e.g., educational psychology, educational psychology measures, principles of behavior modification).
5. Courses in special education (e.g., introduction to special education, learning disabilities).
6. Child development courses (e.g., human growth and development, principles and theories of child development, history and theories of early childhood education).

NOTE: General education courses (e.g., introduction to psychology, sociology, history, literature, humanities) will not be credited toward fulfillment of the required 20 hours.

- (3) The applicant must complete an approved human relations component.

(4) The program must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

27.3(5) Professional service administrator.

a. Authorization. The holder of this endorsement is authorized to serve as a supervisor of special education support programs. However, an individual holding a statement of professional recognition is not eligible for the professional service administrator endorsement.

b. Program requirements.

(1) An applicant must hold a master's degree in preparation for school psychology, speech/language pathology, audiology (or education of students who are deaf or hard of hearing), or social work.

(2) Content. The program shall include a minimum of 16 graduate semester hours to specifically include the following:

1. Consultation process in special or regular education.
2. Current issues in special education administration including school law/special education law.
3. Program evaluation.
4. Educational leadership.
5. Administration and supervision of special education.
6. Practicum: Special education administration. NOTE: This requirement may be waived based on two years of experience as a special education administrator.
7. School personnel administration.
8. Evaluator approval component.

c. Other. The applicant must:

(1) Have four years of support service in a school setting with special education students in the specific discipline area desired.

(2) Meet the practitioner licensure requirements of one of the following endorsements:

1. School audiologist (or deaf or hard of hearing at K-8 and 5-12).
2. School psychologist.
3. School social worker.
4. Speech-language pathologist.

27.3(6) Director of special education of an area education agency.

a. Authorization. The holder of this endorsement is authorized to serve as a director of special education of an area education agency. Assistant directors are also required to hold this endorsement. However, an individual holding a statement of professional recognition is not eligible for the director of special education of an area education agency endorsement.

b. Program requirements.

(1) Degree—specialist or its equivalent. An applicant must hold a master's degree plus at least 32 semester hours of planned graduate study in administration or special education beyond the master's degree.

(2) Endorsement. An applicant must hold or meet the requirements for one of the following:

1. PK-12 principal and PK-12 supervisor of special education (see rule 282—18.9(272));
2. Supervisor of special education—instructional (see rule 282—15.5(272));
3. Professional service administrator (see subrule 27.3(5)); or
4. A letter of authorization for special education supervisor issued prior to October 1, 1988.

(3) Content. An applicant must have completed a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements to include the following:

1. Knowledge of federal, state and local fiscal policies related to education.
2. Knowledge of school plant/facility planning.
3. Knowledge of human resources management, including recruitment, personnel assistance and development, evaluations, and negotiations.
4. Knowledge of models, theories and philosophies that provide the basis for educational systems.
5. Knowledge of current issues in special education.
6. Knowledge of special education school law and legislative and public policy issues affecting children and families.

7. Knowledge of the powers and duties of the director of special education of an area education agency as delineated in Iowa Code section 273.5.

8. Practicum in administration and supervision of special education programs.

(4) Experience. An applicant must have three years of administrative experience as a PK-12 principal or PK-12 supervisor of special education.

(5) Competencies. Through completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements, the director of special education accomplishes the following:

1. Facilitates the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by the school community.

2. Advocates, nurtures and sustains a school culture and instructional program conducive to student learning and staff professional growth.

3. Ensures management of the organization, operations and resources for a safe, efficient and effective learning environment.

4. Collaborates with educational staff, families and community members; responds to diverse community interests and needs; and mobilizes community resources.

5. Acts with integrity and fairness and in an ethical manner.

6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

7. Collaborates and assists in supporting integrated work of the entire agency.

c. *Other.*

(1) Option 1: Instructional. An applicant must meet the requirements for one special education teaching endorsement and have three years of teaching experience in special education.

(2) Option 2: Support. An applicant must meet the practitioner licensure requirements for one of the following endorsements and have three years of experience as a:

1. School audiologist;

2. School psychologist;

3. School social worker; or

4. Speech-language pathologist.

27.3(7) School social worker. A person who meets the requirements set forth below may be issued an endorsement. Alternatively, a person may meet the requirements for a statement of professional recognition (SPR) issued by the board of educational examiners in this area as set forth in 282—Chapter 16.

a. *Authorization.* An individual who meets the requirements of 282—subrule 16.6(2) is authorized to serve as a school social worker to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. *Endorsement requirements.* An applicant must hold a master's degree in social work from an accredited school of social work to include a minimum of 20 semester hours of coursework (including practicum experience) which demonstrates skills, knowledge, and competencies in the following areas:

(1) Social work.

1. Assessment (e.g., social, emotional, behavioral, and familial).

2. Intervention (e.g., individual, group, and family counseling).

3. Related studies (e.g., community resource coordination, multidiscipline teaming, organizational behavior, and research).

(2) Education.

1. General education (e.g., school law, foundations of education, methods, psychoeducational measurement, behavior management, child development).

2. Special education (e.g., exceptional children, psychoeducational measurement, behavior management, special education regulations, counseling school-age children).

(3) Practicum experience. A practicum experience in a school setting under the supervision of an experienced school social work practitioner is required. The practicum shall include experiences that lead to the development of professional identity and the disciplined use of self. These experiences will

include: assessment, direct services to children and families, consultation, staffing, community liaison and documentation. If a person has served two years as a school social worker, the practicum experience can be waived.

(4) Completion of an approved human relations component is required.

(5) The program must include preparation that contributes to the education of students with disabilities and students who are gifted and talented.

27.3(8) School audiologist. A person who meets the requirements set forth below may be issued an endorsement. Alternatively, a person may meet the requirements for a statement of professional recognition (SPR) issued by the board of educational examiners in this area as set forth in 282—Chapter 16.

a. Authorization. The holder of this endorsement is authorized to serve as a school audiologist to pupils from birth to age 21 who are deaf or hard of hearing (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. Program requirements.

(1) An applicant must hold a master's degree in audiology.

(2) Content. An applicant must complete the requirements in audiology and in the professional education sequence, i.e., 20 semester hours including student teaching/internship as a school audiologist. Courses in the following areas may be recognized for fulfilling the 20-hour sequence:

1. Curriculum courses (e.g., reading, methods, curriculum development).
2. Foundations (e.g., philosophy of education, foundations of education).
3. Educational measurements (e.g., school finance, tests and measurements, measures and evaluation of instruction).
4. Educational psychology (e.g., educational psychology, educational psychology measures, principles of behavior modification).
5. Courses in special education (e.g., introduction to special education, learning disabilities).
6. Child development courses (e.g., human growth and development, principles and theories of child development, history of early childhood education).

NOTE: General education courses (e.g., introduction to psychology, sociology, history, literature, humanities) will not be credited toward fulfillment of the required 20 hours.

(3) An applicant must complete an approved human relations component.

(4) The program must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

[ARC 7980B, IAB 7/29/09, effective 9/2/09; ARC 9074B, IAB 9/8/10, effective 10/13/10; ARC 9076B, IAB 9/8/10, effective 10/13/10; ARC 1328C, IAB 2/19/14, effective 3/26/14; ARC 2016C, IAB 6/10/15, effective 7/15/15; ARC 2397C, IAB 2/17/16, effective 3/23/16; ARC 5322C, IAB 12/16/20, effective 1/20/21; ARC 5802C, IAB 7/28/21, effective 9/1/21]

282—27.4(272) Specific renewal requirements for the initial professional service license.

27.4(1) In addition to the provisions set forth in this rule, an applicant must meet the general requirements set forth under rule 282—20.3(272).

27.4(2) If a person meets all requirements for the standard professional service license except for the requirements in paragraph 27.2(2) “b,” the initial professional service license may be renewed upon written request. A second renewal may be granted if the holder of the initial license has not met the requirements in paragraph 27.2(2) “b” and if the license holder can provide evidence of employment which will be acceptable for the experience requirement.

[ARC 8609B, IAB 3/10/10, effective 4/14/10]

282—27.5(272) Specific renewal requirements for the standard professional service license.

27.5(1) In addition to the provisions set forth in this rule, an applicant must meet the general requirements set forth in rule 282—20.3(272).

27.5(2) Four units are needed for renewal. For an applicant who also holds a specialist's or doctor's degree, two units are needed for renewal. These units may be earned in any combination listed below:

a. One unit may be earned for each semester hour of graduate credit which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

b. One unit may be earned for each semester hour of graduate or undergraduate credit which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

c. One unit may be earned for each semester hour of credit which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

d. One unit may be earned upon completion of each licensure renewal course or activity approved pursuant to guidelines established by the board of educational examiners.

e. Two units may be earned upon the successful completion of an individualized professional development plan as verified by the supervising licensed evaluator, or one unit if the applicant holds a specialist's or doctor's degree.

[ARC 8609B, IAB 3/10/10, effective 4/14/10; ARC 3829C, IAB 6/6/18, effective 7/11/18; ARC 5803C, IAB 7/28/21, effective 9/1/21; ARC 6127C, IAB 1/12/22, effective 2/16/22]

282—27.6(272) Specific requirements for a Class B license. A Class B license, which is valid for two years and which is nonrenewable, may be issued to an individual under the following conditions:

27.6(1) Endorsement in progress. The individual has a valid professional service license and one or more professional service endorsements, but is seeking to obtain some other professional service endorsement. A Class B license may be issued if requested by an employer and if the individual seeking to obtain some other professional service endorsement has completed at least two-thirds of the requirements, or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for the endorsement.

27.6(2) Request for exception. A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

27.6(3) Expiration. This license will expire on June 30 of the fiscal year in which it was issued plus one year.

[ARC 8959B, IAB 7/28/10, effective 9/1/10]

282—27.7(272) Timely renewal. A license may only be renewed less than one year before it expires.

[ARC 9452B, IAB 4/6/11, effective 5/11/11]

These rules are intended to implement Iowa Code chapter 272.

[Filed ARC 7980B (Notice ARC 7743B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]

[Filed ARC 8609B (Notice ARC 8410B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 8959B (Notice ARC 8689B, IAB 4/7/10), IAB 7/28/10, effective 9/1/10]

[Filed ARC 9074B (Notice ARC 8829B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9076B (Notice ARC 8831B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9452B (Notice ARC 9301B, IAB 12/29/10), IAB 4/6/11, effective 5/11/11]

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[Filed ARC 2016C (Notice ARC 1918C, IAB 3/18/15), IAB 6/10/15, effective 7/15/15]

[Filed ARC 2230C (Notice ARC 2130C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]

[Filed ARC 2397C (Notice ARC 2237C, IAB 11/11/15), IAB 2/17/16, effective 3/23/16]

[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

[Filed ARC 3829C (Notice ARC 3710C, IAB 3/28/18), IAB 6/6/18, effective 7/11/18]

[Filed ARC 3979C (Notice ARC 3827C, IAB 6/6/18), IAB 8/29/18, effective 10/3/18]

[Notice of Intended Action ARC 5212C, IAB 12/16/20]

[Notice of Intended Action ARC 5216C, IAB 12/16/20]

[Filed ARC 5321C, IAB 12/16/20, effective 1/20/21]

[Filed ARC 5322C, IAB 12/16/20, effective 1/20/21]

[Filed ARC 5802C (Notice ARC 5666C, IAB 6/2/21), IAB 7/28/21, effective 9/1/21]

[Filed ARC 5803C (Notice ARC 5665C, IAB 6/2/21), IAB 7/28/21, effective 9/1/21]

[Filed ARC 6127C (Notice ARC 5935C, IAB 10/6/21), IAB 1/12/22, effective 2/16/22]

[Filed ARC 6867C (Notice ARC 6680C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

[Filed ARC 6870C (Notice ARC 6677C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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283—26.1(261) Health care award program. The health care award program is a state-supported and state-administered program established to provide financial awards to nurse educators teaching at eligible Iowa colleges and universities, as well as applicants who agree to practice as registered nurses, advanced registered nurse practitioners, or physician assistants in service commitment areas for five consecutive years, and who meet the requirements of these rules.

[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.2(261) Definitions. As used in this chapter:

“Advanced registered nurse practitioner” means an individual who graduated from an accredited graduate or postgraduate advanced practice educational program, is licensed by the board of nursing as a registered nurse, is licensed by the board of nursing as an advanced registered nurse practitioner, and is employed as an advanced registered nurse practitioner.

“Nurse educator” means a registered nurse who holds a master’s or doctorate degree and is employed by an Iowa community college, an accredited private institution defined in Iowa Code section 261.9, or an institution of higher learning governed by the state board of regents as a faculty member who teaches nursing as provided in 655—Chapter 2 at a nursing program approved by the board of nursing pursuant to Iowa Code section 152.5.

“Physician assistant” means an individual who graduated with a master’s degree, holds a practitioner’s license to practice as a physician assistant pursuant to Iowa Code chapter 148C, and is employed as a physician assistant.

“Registered nurse” means a nurse who is licensed by the board of nursing as a registered nurse and is employed as a registered nurse.

“Service commitment area” means a city in Iowa with a population of less than 26,000 that is located more than 20 miles from a city with a population of 50,000 or more. Locations and distances between cities will be consistently measured and verified by calculating the shortest travel distance on paved roads. After an eligible applicant signs an agreement to practice in a service commitment area, subsequent population increases will not impact that applicant’s continued eligibility for the program, to the extent allowed in rule 283—26.3(261).

[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 5137C, IAB 8/12/20, effective 9/16/20; ARC 5222C, IAB 10/7/20, effective 11/11/20; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.3(261) Eligibility requirements.

26.3(1) An eligible applicant must be:

a. A student in the final year of a degree program leading to a license to practice as an advanced registered nurse practitioner, physician assistant, or registered nurse who signs an agreement to practice in a service commitment area for five consecutive years; or

b. A licensed advanced registered nurse practitioner, physician assistant, or registered nurse who signs an agreement to practice in a service commitment area for five consecutive years; or

c. A nurse educator who signs an agreement to teach full-time during the fall and spring semesters, or the equivalent, for five consecutive years; or

d. A nurse educator who teaches at least part-time during the fall and spring semesters, or the equivalent. The individual must also be employed as an advanced registered nurse practitioner or registered nurse in Iowa, and the total hours worked between these occupations must equate to full-time employment. An advanced registered nurse practitioner or registered nurse who signs an agreement to teach at least part-time as a nurse educator is not required to be employed in a service commitment area but is required to work at least part-time as a nurse educator for five consecutive years.

26.3(2) An eligible applicant must complete and file an application for the program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

26.3(3) An eligible applicant must annually complete and return to the commission an affidavit of practice verifying full-time employment, as defined by the employer, in a service commitment area during the entire year as an advanced registered nurse practitioner, physician assistant, or registered nurse, or full-time employment, as defined by the employer, as a nurse educator. A nurse educator who teaches part-time during the fall and spring semesters, or the equivalent, and is also employed as a registered nurse or advanced registered nurse practitioner in Iowa must annually complete and return an affidavit of practice verifying that the total hours worked equates to full-time employment.
[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.4(261) Awarding of funds.

26.4(1) Selection criteria. All completed applications received on or before the published deadline will be considered for funding. To the extent possible, an equal number of new advanced registered nurse practitioners, nurse educators, physician assistants, and registered nurses will be offered awards based on the availability of appropriated funds. In the event that funding is insufficient to award all eligible applicants within an occupation category, criteria for selection of eligible applicants within each occupation category will be prioritized as follows:

a. Renewal status. The priority status of the applicant in the first year funding is received will be retained for renewal in priority determinations in future years as long as the applicant continues to meet the criteria in rule 283—26.3(261). Applicants within this category are prioritized as follows:

(1) Eligible applicants who are Iowa residents and eligible applicants who are members of the Iowa national guard, if requested by the adjutant general;

(2) Date of application;

b. Students in the final year of a degree program leading to a license to practice in a specified occupation under this chapter who are Iowa residents or who are members of the Iowa national guard, if requested by the adjutant general; and advanced registered nurse practitioners and registered nurses who agree to begin practice as nurse educators on at least a part-time basis and who are Iowa residents or members of the Iowa national guard, if requested by the adjutant general. Applicants within this category are prioritized by date of application;

c. Iowa residents or members of the Iowa national guard, if requested by the adjutant general, who are licensed to practice in a specified occupation under this chapter and who agree to work in a service commitment area but who are not employed in a service commitment area at the time of application. Applicants within this category are prioritized by date of application;

d. The most recent graduates of a degree program leading to a license to practice in a specified occupation under this chapter or leading to the qualification to be a nurse educator, with the most recent academic year graduates given priority, who are Iowa residents or members of the Iowa national guard, if requested by the adjutant general. Applicants within this category are prioritized by date of application;

e. Students in the final year of a degree program leading to a license to practice in a specified occupation under this chapter who are neither Iowa residents nor members of the Iowa national guard requested by the adjutant general; and advanced registered nurse practitioners and registered nurses who agree to begin practice as nurse educators on at least a part-time basis and who are neither Iowa residents nor members of the Iowa national guard requested by the adjutant general. Applicants within this category are prioritized by date of application;

f. Individuals who are neither Iowa residents nor members of the Iowa national guard requested by the adjutant general but who are licensed to practice in a specified occupation under this chapter, and who agree to work in a service commitment area but are not employed in a service commitment area at the time of application. Applicants within this category are prioritized by date of application;

g. The most recent graduates of a degree program leading to a license to practice in a specified occupation under this chapter or leading to the qualification to be a nurse educator, who are neither Iowa residents nor members of the Iowa national guard requested by the adjutant general, with the most recent academic year graduates given priority. Applicants within this category are prioritized by date of application.

26.4(2) *Applicants who are members of the Iowa national guard requested by the adjutant general.* Applicants who are members of the Iowa national guard, if requested by the adjutant general, are subject to the following provisions:

a. Members of the Iowa national guard are exempt from the service commitment area requirement, and

b. Members of the Iowa national guard must have satisfactorily completed required guard training and must maintain satisfactory performance of guard duty.

26.4(3) *Annual award.* The maximum annual award shall be \$6,000.

26.4(4) *Extent of award.* Eligible applicants may receive an award for no more than five consecutive years. Eligible applicants who fail to receive awards in consecutive years will not be considered for subsequent years of awards.

26.4(5) *Disbursement of funds.*

a. Awards will be disbursed upon completion of the year for which the award was approved and upon certification from the employer that the advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse was employed full-time, as defined by the employer, during the entire year and completed the year in good standing.

b. Awards will be distributed directly to the eligible applicant.

[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.5(261) Award cancellation.

26.5(1) An eligible applicant who has been designated for an award shall notify the commission within 30 days following termination or cessation of full-time practice in a service commitment area as an advanced registered nurse practitioner, physician assistant, or registered nurse; termination or cessation of full-time employment as a nurse educator; or combined full-time employment as a nurse educator and registered nurse or nurse educator and advanced registered nurse practitioner.

26.5(2) A recipient of an award is responsible for notifying the commission immediately of a change in name, place of employment, or home address.

[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.6(261) Restrictions. A recipient of an award under Iowa Code section 261.114 or 261.115 shall not be eligible for an award under this chapter.

[ARC 4186C, IAB 12/19/18, effective 1/23/19; ARC 6889C, IAB 2/8/23, effective 3/15/23]

283—26.7(261) Transition provisions. Recipients of awards through the health care loan repayment program during the 2022 state fiscal year will be eligible for funding under the health care award program if the eligible applicants meet the eligibility criteria of the health care award program. Under this provision, no recipient will receive more than five consecutive awards between the health care loan repayment program and the health care award program. Under this provision, recipients can elect to continue to have the award applied directly to previously verified outstanding federal student loans.

[ARC 6889C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code section 261.116.

[Filed ARC 4186C (Notice ARC 3939C, IAB 8/15/18), IAB 12/19/18, effective 1/23/19]

[Filed ARC 5137C (Notice ARC 5031C, IAB 5/6/20), IAB 8/12/20, effective 9/16/20]

[Filed ARC 5222C (Notice ARC 5124C, IAB 8/12/20), IAB 10/7/20, effective 11/11/20]

[Filed ARC 6889C (Notice ARC 6598C, IAB 10/19/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 31
MENTAL HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM

283—31.1(261) Definitions.

“Eligible institution” means an institution of higher learning governed by the state board of regents or an accredited private institution as defined in Iowa Code section 261.9.

“Eligible loan” means the total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, Federal Direct Loan Program, federal Graduate PLUS Loan, or federal Perkins Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, Federal Direct Loan, federal Graduate PLUS Loan, or federal Perkins Loan qualifies for loan repayment. An individual who signs a program agreement to receive loan repayment under this program and who refinances an eligible loan by obtaining a private educational loan may continue to receive loan repayment awards.

“Eligible practice area” means a location in Iowa that is within a federal mental health shortage area, as designated by the health resources and services administration of the United States Department of Health and Human Services. Mental health professionals who serve clients who reside in eligible practice areas, including rural locations outside of city limits but within the federal mental health shortage area, are eligible to receive the loan repayment award if they are serving those clients on at least a part-time basis. If the designation status of a mental health shortage area is removed after the mental health professional signs an agreement, the mental health professional will continue to qualify for loan repayments provided that all other provisions of the agreement continue to be met.

“Full-time” means that an average of at least 40 hours per week are spent providing services as a mental health professional to clients in eligible practice areas.

“Mental health professional” means a nonprescribing individual who meets all of the following qualifications:

1. The individual holds at least a master’s degree from an eligible institution in a mental health field, including psychology, counseling and guidance, social work, marriage and family therapy, or mental health counseling.
2. The individual has at least two years of post-master’s degree clinical experience, supervised by another individual in the mental health field, in assessing and diagnosing mental health needs and problems and in providing mental health counseling services to individuals or groups on a full-time or part-time basis.
3. The individual holds a current practitioner’s license issued by an agency or board under the Iowa department of public health or its successor agency, authorizing the individual to practice as a licensed psychologist, licensed independent social worker or licensed master social worker, licensed marriage and family therapist, or licensed mental health counselor.

“Part-time” means that an average of at least 28 hours, but fewer than 40 hours, per week are spent providing services as a mental health professional to clients in eligible practice areas.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

283—31.2(261) Eligibility criteria.

31.2(1) *Eligible applicant.* An eligible applicant is a mental health professional or a person who agrees to become a mental health professional, agrees to sign a program agreement, and agrees to complete the obligation.

31.2(2) *Program agreement.* The program agreement specifies the obligation and other details pertaining to the program.

31.2(3) *Obligation.* An eligible applicant must agree to provide services as a mental health professional in an eligible practice area or eligible practice areas on a full-time basis for five consecutive years unless granted a waiver for part-time practice.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

283—31.3(261) Awarding and payment of funds.

31.3(1) Selection criteria. New program agreements will be entered into with eligible applicants who are mental health professionals or agree to become mental health professionals.

31.3(2) Priority for awards. In the event that funding is insufficient to award all new eligible applicants, eligible applicants will be prioritized as follows:

a. Eligible applicants who are Iowa residents or eligible applicants who are members of the Iowa national guard, if requested by the adjutant general. Members of the Iowa national guard must have satisfactorily completed required guard training and must maintain satisfactory performance of guard duty. In the event that funding is insufficient to award all new eligible applicants who meet these criteria, selection of new eligible applicants will be further prioritized as follows:

(1) Eligible applicants who are students in their final year of the degree program that leads to their qualification as a mental health professional, according to the date the application was received by the commission.

(2) Eligible applicants completing the two-year post-degree clinical experience required to be a mental health professional, according to the date the application was received by the commission.

(3) All other eligible applicants based on the fiscal year in which the eligible applicant met the requirements of a mental health professional, with priority given to those meeting the requirements in the most recent fiscal year. In the event that funding is insufficient to award all new eligible applicants who met the requirements of a mental health professional within a given fiscal year, eligible applicants who met the criteria in that fiscal year will be prioritized according to the date the application was received by the commission.

b. Eligible applicants who are not Iowa residents and are not members of the Iowa national guard requested by the adjutant general. In the event that funding is insufficient to award all new eligible applicants who meet these criteria, selection of new eligible applicants will be further prioritized as follows:

(1) Eligible applicants who are students in their final year of the degree program that leads to their qualification as a mental health professional, according to the date the application was received by the commission.

(2) Eligible applicants completing the two-year post-degree clinical experience required to be a mental health professional, according to the date the application was received by the commission.

(3) Other eligible applicants based on the fiscal year in which the eligible applicant met the requirements of a mental health professional, with priority given to those meeting the requirements in the most recent fiscal year. In the event that funding is insufficient to award all new eligible applicants who met the requirements of a mental health professional within a given fiscal year, eligible applicants who met the criteria in that fiscal year will be prioritized according to the date the application was received by the commission.

31.3(3) Mental health professional service requirement. The service requirement for a full-time mental health professional is five years. The service requirement for a mental health professional who is granted a waiver for part-time practice will not exceed seven consecutive years. The mental health professional must annually verify, in a format acceptable to the commission, that the mental health professional provided mental health services in an eligible practice area or eligible practice areas on a full-time basis, or on a part-time basis if a waiver for part-time practice is granted, for each year of required service.

31.3(4) Award amounts. A mental health professional may receive up to \$40,000. The maximum award will be paid after the service requirement is completed.

31.3(5) Award proration and disbursement. An award will not exceed the outstanding balance of the mental health professional's eligible loans.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

283—31.4(261) Part-time practice. The commission may waive the requirement that the mental health professional be employed full time if the mental health professional requests a waiver from the commission in writing and provides mental health services in eligible practice areas at least 28 hours per 40-hour workweek. If a waiver request is granted by the commission, the agreement will be

amended to provide an allowance for part-time employment. The five-year employment obligation will be proportionally extended to ensure the mental health professional provides mental health services in eligible practice areas for the equivalent of five full-time years, not to exceed a total of seven consecutive years.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

283—31.5(261) Satisfaction of employment obligation. All obligations under the mental health professional loan repayment program are considered to be satisfied when any of the following conditions are met:

1. All terms of the agreement are met.
2. The person who entered into the agreement dies.
3. The person who entered into the agreement, due to permanent disability, is unable to meet the requirements of these rules.
4. The person who entered into the agreement has no remaining eligible loan balance to repay.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

283—31.6(261) Restrictions. A recipient of an award under Iowa Code section 261.114 shall not be eligible for an award under this chapter. A mental health professional who is in default on a Stafford loan, SLS Loan, Grad PLUS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for repayment benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5.

[ARC 6888C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code section 261.117.

[Filed ARC 6888C (Notice ARC 6759C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 7
APPEALS AND HEARINGS

[Ch 7, July 1973 IDR Supplement, renumbered as Ch 81]

[Prior to 7/1/83, Social Services[770] Ch 7]

[Prior to 2/11/87, Human Services[498]]

PREAMBLE

This chapter applies to contested case proceedings conducted by or on behalf of the department. The definitions in rule 441—7.1(17A) apply to the rules in both Division I and Division II of Chapter 7. [ARC 1206C, IAB 12/11/13, effective 1/15/14]

441—7.1(17A) Definitions.

“*Adverse benefit determination*” means any adverse action taken as to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Appeals section*” means the director’s designee who is charged with administering the department’s appeals.

“*Appellant*” means a person, including an authorized representative acting on the person’s behalf, seeking to appeal some action pursuant to this chapter.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (hawki) program, foster care, adoption, and aftercare services.

“*Authorized representative*” means a person lawfully designated by an individual to act on the individual’s behalf or who has legal authority to act on behalf of the individual.

“*Contested case*” refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

“*Department*” means the Iowa department of human services.

“*DIA*” means the Iowa department of inspections and appeals and may include presiding officers where appropriate.

“*Director*” means the director of the department or the director’s designee.

“*Enrollee*” means any applicant to or recipient of benefits or services pursuant to an assistance program.

“*Good cause,*” for purposes of this rule, shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

“*In-person hearing*” means an appeal hearing where the administrative law judge and appellant are physically present in the same location but witnesses are not required to be physically present.

“*Intentional program violation*” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits or an electronic benefit transfer (EBT) card. An intentional program violation is determined through a SNAP administrative disqualification hearing, a court conviction, or when an individual signs and returns Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“*Managed care organization*” or “*MCO*” has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

“*Medicaid*” means Iowa’s medical assistance program administered under Iowa Code chapter 249A.

“*Party-in-interest*” refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

“*Presiding officer*” means an administrative law judge charged with the administration and adjudication of the contested case hearing process for a particular appeal.

“*Self-represented*” means representing oneself without an attorney.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 5810C, IAB 7/28/21, effective 9/1/21; ARC 6384C, IAB 6/29/22, effective 9/1/22; Editorial change: IAC Supplement 8/10/22]

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, Supplemental Nutrition Assistance Program (SNAP) appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16 as amended to December 8, 2021, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F, as both are amended to December 8, 2021.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 5810C, IAB 7/28/21, effective 9/1/21; ARC 6384C, IAB 6/29/22, effective 9/1/22]

DIVISION I
GENERAL APPEALS PROCESS

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) Requirements. A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

- a. The party-in-interest is entitled to a contested case hearing;
- b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and
- c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) Refusal to process an application. Unless otherwise provided by law, when an appellant seeks a contested case hearing after the department refuses to process an application for benefits or services, a hearing shall be granted.

7.3(3) When a hearing is not granted. A hearing shall not be granted when one of the following issues is appealed:

- a. Patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.
- b. Children have been removed from or placed in a specific foster care setting or preadoptive placement.
- c. A final decision from a previous hearing with a presiding officer has been implemented.

7.3(4) Contractual rights not subject to contested case hearing. Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

7.3(5) Change in law. A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

7.3(6) Competitive procurement bid appeals. Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—7.4(17A) Initiating an appeal.

7.4(1) Exhaustion of remedies. An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

7.4(2) Medicaid managed care enrollees exhaustion of remedies.

a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule 441—73.12(249A) or has been deemed to have exhausted the managed care organization appeals under paragraph 7.4(2) “b.”

b. If a Medicaid enrollee’s managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization’s appeals process and may initiate a contested case hearing.

7.4(3) Time to appeal. For a contested case hearing to be granted, the following timelines must be met:

a. *Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program and autism support program.* For appeals pertaining to Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

b. *Managed care organization medical coverage.* For appeals pertaining to medical services coverage under Medicaid managed care, the appellant must appeal on or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

c. *Tax offsets.* Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, the appellant must appeal on or before the fifteenth day following the date of notice of the action. For counties appealing a debtor offset under 441—Chapter 14, the county must appeal on or before the thirtieth day following the date of notice of the offset.

d. *Iowa individual disaster assistance program.* For appeals pertaining to the Iowa individual disaster assistance program, the appellant must appeal on or before the thirtieth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

e. *Iowa disaster case management program.* For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the thirtieth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

f. *Dependent adult abuse.* For appeals regarding dependent adult abuse, the appellant must appeal within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. *Child abuse.* For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. *Sex offender risk assessment.* For appeals regarding a sex offender risk assessment, the appellant must appeal in writing on or before the fourteenth day following the date of notice.

i. *Assistance program overpayments.* For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (hawki), family planning program or Supplemental Nutrition Assistance Program (SNAP) overpayments, the party-in-interest’s right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

j. *All other appeals.* For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director’s designee may, at the director’s or designee’s sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

7.4(4) Written and oral notification. The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person’s status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

- (1) The right to request a hearing.
- (2) The procedure for requesting a hearing.
- (3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and all notices of decision.
[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 5810C, IAB 7/28/21, effective 9/1/21; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—7.5(17A) How to request an appeal.

7.5(1) Ways to request a hearing. An appellant may request a contested case hearing:

- a. Via the department's website,
- b. By telephone, except as specified in subrule 7.5(4),
- c. By mail,
- d. In person, except as specified in subrule 7.5(4), or
- e. Through other commonly available electronic means (such as email or facsimile).

7.5(2) Hearing request. The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

7.5(3) Filing date. The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

7.5(4) Appeals that must be filed in writing. Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) Department's responsibilities. Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Within one working day of receipt of an appeal request, forward Form 470-0487 or 470-0487(S), Appeal and Request for Hearing; the written appeal; the postmarked envelope, if there is one; and a copy of the notification of the proposed adverse action to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section. When practicable, the summary may also include suggested relevant legal authorities.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.6(17A) Prehearing procedures.

7.6(1) Acknowledgment of appeal. When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) Acceptance or denial of appeal. The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing under rule 441—7.3(17A). If a request is accepted, the appeals section will certify the appeal to DIA and designate the issues on appeal pursuant to subrule 7.6(3). If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day

following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) Designation of issues for appeal.

a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues identified may include all issues raised by the appellant and may also include additional issues identified by the appeals section. The issues designated shall be certified to DIA and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, the party shall identify the additional issues within the following timelines. The presiding officer shall determine whether all issues have properly been preserved.

(1) Child abuse and dependent adult abuse registry appeals. For child abuse and dependent adult abuse registry appeals, the party shall identify additional issues at least 30 days before the date of hearing.

(2) Appeals set on or before the tenth day following the notice of hearing. If the hearing is on or before the tenth day following the date of the notice of hearing, the party shall identify any additional issues at the hearing.

(3) All other appeals. For all other appeals not identified in this paragraph, the party shall identify the additional issues on or before the tenth day following the date of the notice of hearing.

7.6(4) Group hearings regarding medical assistance. The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.6(5) Notice of hearing.

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5) "b," DIA shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address.

b. Intentional program violation hearing notices. DIA shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5) "a."

7.6(6) Appellant's right to department's case file. Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

7.6(7) Informal conference. The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

a. When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

b. An informal conference need not be requested for the appellant to examine the contents of the case record.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.7(17A) Timelines for contested case hearings.

7.7(1) Medical assistance. In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f) as amended to December 8, 2021.

7.7(2) Community spouse resource allowance. In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.7(3) Sex offender risk assessment. In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.
[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.8(17A) Contested case hearing procedures.

7.8(1) Method. Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) Evidence.

a. The parties to a contested case hearing shall be permitted to:

- (1) Bring witnesses,
- (2) Submit competent evidence to establish all pertinent facts and circumstances,
- (3) Present arguments without undue interference,
- (4) Question or refute any testimony or evidence, including through cross-examination, and
- (5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) Right to counsel. Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

7.8(4) Self-represented appellants. The presiding officer shall, at the officer's discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) Closed to public. Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) Administration of appeals. Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

7.8(7) Contested cases with no factual dispute. If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) Ex parte communication. Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

7.9(2) Default. If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12. Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) Withdrawal. An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's

website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) Medical assessment. For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) Standard of review. In child abuse appeals, the criteria and level of deference by which the presiding officer shall render a decision is based on a preponderance of evidence.

7.9(6) Interpreters. The department shall provide translation and interpretation services to appellants not fluent in English. Appellants are entitled to have an interpreter present during appeal hearings. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

7.9(7) Persons living with disabilities. Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.10(17A) Proposed decision.

7.10(1) Contents. The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) Access to record. After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.11(17A) Director's review.

7.11(1) Time. Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within 14 calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1) "b." A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) Grant or denial of review. The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the fourteenth day following the issuance of the proposed decision.

When the department grants a request for director's review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have 14 calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

7.11(3) Cross-appeal. When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have 14 calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have 14 calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) Limited record. Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) Oral arguments. Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

- (1) The appellant requests a delay;
- (2) The appellant fails to take a required action; or
- (3) There is an administrative or other emergency beyond the department's control.

c. DIA shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department shall also notify the appellant of the appellant's right to seek judicial review, where applicable.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review pursuant to subrule 7.13(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2) "a," the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

- (1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or
- (2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2) "b."

7.13(5) *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law.

If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer's proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.16(17A) Authorized representatives.

7.16(1) Regulations. The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

7.16(2) Designation of authority. Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

7.16(3) Written designation. For persons other than attorneys seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals. This form is required for all managed care appeals, including those handled through the expedited appeals process. Failure to provide the form or legal documentation may result in denial of the appeal request.

7.16(4) Appearance by attorney. Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance identifying the legal counsel.

[ARC 4972C, IAB 3/11/20, effective 4/15/20; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) Programs for which no federal or state law applies. For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a. An appeal is filed before the effective date of the intended action; or
- b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

7.17(2) *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license 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. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated is necessary to avoid the immediate danger.
[ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual's right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f) as amended to December 8, 2021.

7.19(1) When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

7.19(2) By signing Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, the individual:

- a.* Waives the right to an administrative disqualification hearing;
- b.* Consents to the SNAP disqualification period designated on Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and
- c.* Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

7.19(3) An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, to the appeals section within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification, unless the individual shows the notification was not received within the five-day period.

7.19(4) An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

7.19(5) No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision.
[ARC 5810C, IAB 7/28/21, effective 9/1/21; ARC 6384C, IAB 6/29/22, effective 9/1/22]

441—7.20 to 7.40 Reserved.

DIVISION II
APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department of human services' competitive procurement process.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.42(17A) Requests for timely filing of an appeal. Any bidder that receives either a notice of disqualification or a notice of award, and has first exhausted the reconsideration process, is considered an aggrieved party and may file a written appeal with the department.

7.42(1) An aggrieved party in a competitive procurement must seek reconsideration of a disqualification or a notice of award prior to filing any appeal. The request for reconsideration must be received by the department within five days of the date of either a disqualification notice or notice of award. The department will expeditiously address the request for reconsideration and issue a decision on the reconsideration. If the party seeking reconsideration continues to be an aggrieved party following

receipt of the decision on reconsideration, the aggrieved party may file an appeal within five days of the date of the department's decision on reconsideration.

7.42(2) The written appeal shall state the grounds upon which the appellant challenges the department's decision.

7.42(3) The day after the department's decision on reconsideration is issued is the first day of the period in which the appeal may be filed. The mailing address is: Department of Human Services, Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Appeals may also be sent by fax, email, or in-person delivery.

When an appeal is submitted through an electronic delivery method, such as electronic mail or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method or the appeal was filed via in-person delivery, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 3093C, IAB 6/7/17, effective 7/12/17]

441—7.43(17A) Bidder appeals. The bidder appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of Division II. Division I of this chapter does not apply to competitive procurement bid appeals, unless otherwise noted.

7.43(1) *Hearing time frame.* The presiding officer shall hold a hearing on the bidder appeal within 60 days of the date the notice of appeal was received by the department.

7.43(2) *Registration.* Upon receipt of the notice of appeal, the department shall register the appeal.

7.43(3) *Acknowledgment.* Upon receipt of the notice of appeal, the department shall send a written acknowledgment of receipt of the appeal to the appellant, representative, or both. The appropriate department staff will be notified of the appeal.

7.43(4) *Granting a hearing.* The department shall determine whether an appellant may be granted a hearing and the issues to be discussed at the hearing in accordance with the applicable rules, statutes or federal regulations or request for proposal.

a. The appeals of those appellants who are granted a hearing shall be certified to the department of inspections and appeals for the hearing to be conducted. The department shall indicate at the time of certification the issues to be discussed at the hearing.

b. Appeals of those appellants that are denied a hearing shall not be closed until a letter is sent to the appellant and the appellant's representative advising of the denial of the hearing and the basis upon which that denial is made. Any appellant that disagrees with a denial may present additional information relative to the reason for denial and request reconsideration by the department over the denial.

7.43(5) *Hearing scheduled.* For those records certified for hearing, the department of inspections and appeals shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in the department of inspections and appeals rules in 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

7.43(6) *Method of hearing.* The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.8(17A).

7.43(7) *Reschedule requests.* Requests made by the appellant or the department to set another date, time, method or place of hearing shall be made to the department of inspections and appeals, except as otherwise noted. The granting of the requests will be at the discretion of the department of inspections and appeals. All requests concerning the scheduling of a hearing shall be made to the department of inspections and appeals directly.

7.43(8) Notification. For those appeals certified for hearing, the department of inspections and appeals shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

a. The notice shall comply with Iowa Code section 17A.12(2), and include a statement that opportunity shall be afforded to all parties to respond and present evidence on all issues involved and to be represented by counsel at their own expense.

b. A copy of this notice shall be made available to the department employee who took the action and to any other parties to the appeal.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.44(17A) Procedures for bidder appeal.

7.44(1) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

7.44(2) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

7.44(3) Amendments to notice of appeal. The aggrieved bidder may amend the grounds upon which the bidder challenges the department's award no later than 15 days prior to the date set for the hearing.

7.44(4) If the hearing is not conducted in person, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

7.44(5) The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to the appellant and representative by mail.

7.44(6) The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

[ARC 1206C, IAB 12/11/13, effective 1/15/14]

441—7.45(17A) Stay of agency action for bidder appeal.

7.45(1) When a stay may be requested.

a. Any party appealing the issuance of a notice of disqualification or notice of award may petition for stay of the decision pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

b. Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

7.45(2) When a stay is granted. In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5) "c."

7.45(3) Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

[ARC 1206C, IAB 12/11/13, effective 1/15/14]

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in rule 441—7.11(17A).

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 3787C, IAB 5/9/18, effective 7/1/18; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.47(17A) Other procedural considerations.

7.47(1) Consolidation—severance.

a. Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues; and

(3) Consolidation would not adversely affect the rights of parties to those proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

b. Severance. The presiding officer may, upon motion by any party or upon the presiding officer's own motion, for good cause shown, order any proceeding or portion thereof severed.

7.47(2) Presiding officer. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals.

7.47(3) Rights of appellants during hearings. All rights afforded appellants at rule 441—7.8(17A) shall apply.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.48(17A) Appeal record.

7.48(1) The appeal record shall consist of all items specified in Iowa Code section 17A.16.

7.48(2) The party that requests a transcription of the proceedings shall bear the cost.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.49(17A) Pleadings.

7.49(1) Pleadings may be required by rule, by the notice of hearing or by order of the presiding officer.

7.49(2) Petition. When an action of the department is appealed and pleadings are required under subrule 7.49(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

- (1) On whose behalf the petition is filed;
- (2) The particular provisions of the statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.49(3) Answer. If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

7.49(4) Amendment. Any notice of hearing, petition or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

[ARC 1206C, IAB 12/11/13, effective 1/15/14]

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

[ARC 1206C, IAB 12/11/13, effective 1/15/14; ARC 4972C, IAB 3/11/20, effective 4/15/20]

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◊ Two or more ARCs

CHAPTER 58
EMERGENCY ASSISTANCE

DIVISION I
IOWA DISASTER AID INDIVIDUAL ASSISTANCE GRANT PROGRAM

PREAMBLE

This division implements a state program of financial assistance to meet disaster-related expenses, food-related costs, or serious needs of individuals or families who are adversely affected by a state-declared disaster emergency. The program is intended to meet needs that cannot be met by other means of financial assistance.

441—58.1(29C) Definitions.

“Bona fide residence” or *“bona fide address,”* as set forth in Iowa Code section 321.1(6C), means the pre-disaster street or highway address of an individual’s dwelling or dwelling unit. The bona fide residence of a person with more than one dwelling is the dwelling for which the person claims a homestead tax credit under Iowa Code chapter 425, if applicable. The bona fide residence of a homeless person is a primary nighttime residence meeting one of the criteria listed in Iowa Code section 48A.2(3).

“Department” means the Iowa department of human services.

“Dwelling” or *“dwelling unit”* means the structure in which a household resides. *“Dwelling”* or *“dwelling unit”* includes permanent structures, mobile homes, manufactured homes, modular homes, fifth-wheel travel trailers, travel trailers, and motor homes in which a household resides.

“Emergency management coordinator” means the person appointed by the local emergency management commission pursuant to Iowa Code sections 29C.9 and 29C.10 to be responsible for development of the countywide emergency operations plan and for coordination and assistance to government officials when an emergency or disaster occurs.

“Fifth-wheel travel trailer,” as set forth in Iowa Code section 321.1(36D)“c,” means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed 45 feet.

“Home” means the pre-disaster dwelling or dwelling unit for a household.

“Household” means all adults and children who lived in the pre-disaster residence who request assistance, as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“Manufactured home” or *“modular home,”* as set forth in Iowa Code section 321.1(36C), is a factory-built structure constructed under authority of 42 U.S.C. §5403 as amended to August 25, 2022, which is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

“Manufactured or mobile home,” as set forth in Iowa Code section 321.1(36D)“a,” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

“Mitigation” means the effort to reduce the loss of life and property by lessening the impact of disasters to reduce human and financial consequences later.

“Motor home,” as set forth in Iowa Code section 321.1(36D)“d,” means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in paragraph “1,” “4,” or “5” of this definition, of the following permanently installed systems which meet American National Standards Institute and National Fire Protection Association standards in effect on the date of manufacture:

1. Cooking facilities.
2. Ice box or mechanical refrigerator.

3. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

4. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

5. Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

6. A 110- to 115-volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

“*Necessary expense*” means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

“*Owner*” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and a right to present use and enjoyment of the property. “*Owner*” includes a mortgagee in possession.

“*Rent*” means an amount paid to the landlord under the rental agreement.

“*Safe, sanitary, and secure*” means free from disaster-related health hazards.

“*Serious need*” means the item or service is essential to the household to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

“*Tenant*” means a person or persons entitled under a rental agreement to occupy a dwelling or dwelling unit to the exclusion of others.

“*Travel trailer,*” as set forth in Iowa Code section 321.1(36D) “*b,*” means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to 8 feet, 6 inches in width and its overall length shall not exceed 45 feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

[ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 5596C, IAB 5/5/21, effective 7/1/21; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.2(29C) Program implementation.

58.2(1) *Disaster declaration.* The Iowa individual assistance grant program (IIAGP) shall be implemented when the governor issues a declaration of a state of disaster emergency that authorizes individual assistance. The program shall be in effect only in those counties named in the declaration. Assistance shall be provided for a period not to exceed 120 days from the date of declaration.

58.2(2) *Voucher system.* The IIAGP will be implemented through a reimbursement or voucher system. Reimbursement may include checks or gift cards provided to the applicant for replacement food or personal property only. The applicant must sign a promise to purchase replacement food or personal property.

58.2(3) *Program extensions.*

a. The program may be extended beyond 120 days through an extension of the governor’s disaster proclamation; or

b. The program may be extended in 30-day intervals requested by the applicant household through the contracted entity and approved by the department.

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441—58.3(29C) Application for assistance. To request assistance for disaster-related expenses, the household shall complete Form 470-4448 and submit it within 45 days of the disaster declaration to the contracted administrative entity.

58.3(1) Application forms are available from an approved administrative entity, as well as the Internet website of the department at www.dhs.iowa.gov.

58.3(2) The application shall include:

- a.* A declaration of the household's annual income, accompanied by a current pay stub, W-2 form, or income tax return.
- b.* An authorization to release confidential information to personnel involved in administering the program.
- c.* A certification of the accuracy of the information provided.
- d.* An assurance that the household had no insurance coverage for claimed items.
- e.* A commitment to refund any part of a grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to local community development groups and charities, the Small Business Administration, or the Federal Emergency Management Administration.
- f.* A short, handwritten narrative of how the disaster event caused the claimed loss, including an itemized list of items damaged by the disaster.
- g.* A copy of a picture identification document for the adult applicant.
- h.* When vehicle damage is claimed, current copies of the vehicle registration and liability insurance card.

58.3(3) The application period may be extended beyond 45 days through an extension of the governor's disaster proclamation. If the forty-fifth day falls on a Saturday, Sunday, or holiday, the deadline is moved to the following business day.

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441—58.4(29C) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

58.4(1) The household's bona fide residence was located in the area identified in the disaster declaration during the designated incident period and the household verifies occupancy at that residence.

58.4(2) Household members are citizens of the United States or are legally residing in the United States.

58.4(3) The household's self-declared annual income is at or less than 200 percent of the federal poverty level for a household of that size.

a. Poverty guidelines are updated annually.

b. All income available to the household is counted, including wages, child support, interest from investments or bank accounts, social security benefits, and retirement income. Proof of income is required.

58.4(4) The household has unmet disaster-related expenses or serious needs that are not covered by insurance. The applicant must provide claim documentation from the insurance company.

58.4(5) The household has not previously received assistance from this program or another program for the same loss in the same disaster.

58.4(6) Household eligibility for home repair assistance for a dwelling or dwelling unit damaged due to a proclaimed disaster is only available for a household that owns and occupies the dwelling or dwelling unit being repaired.

a. Assistance will be denied if preexisting conditions are the cause of the damage.

b. Repairs to rental dwellings, dwelling units, or landlord-owned equipment are excluded under this program.

[ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.5(29C) Eligible categories of assistance. Expenses eligible for grant funding shall be limited to personal property, food assistance, home repair and temporary housing and shall not exceed a total of \$5,000. Assistance is available under the program for the following disaster-related expenses:

58.5(1) Personal property and food assistance may be issued for damage to personal property or food replacement. Eligible items for personal property assistance may include but are not limited to the following items, based on the item's condition:

a. Appliances or equipment, including:

- (1) Small household appliances, including, but not limited to:

1. Toasters,
2. Blenders,
3. Microwaves,
4. Vacuums,
5. Dehumidifiers, and
6. Window air conditioners.
- (2) Large household appliances, if the appliance is owned by the household and not a landlord.
- (3) Outdoor equipment, including:
 1. Lawn mowers, and
 2. Snow blowers.
- b. Food.
- c. Personal hygiene items.
- d. Basic household items, including but not limited to:
 - (1) Furnishings (e.g., tables, chairs, dressers, couches, end tables),
 - (2) Beds (e.g., mattresses, bedding),
 - (3) Curtains or window treatments,
 - (4) Car or booster seats,
 - (5) Strollers,
 - (6) Storage totes,
 - (7) Televisions,
 - (8) Laptop or desktop computers, and
 - (9) Area rugs.
- e. Clothing.
- f. Short-term transportation, such as bus passes.
- g. Debris removal.
- h. Vehicle repair or replacement, if a total loss has occurred.
- i. Other personal property items, as determined by the department, in order to assist the household in making the dwelling or dwelling unit safe, sanitary, and secure.

58.5(2) Home repair assistance may be issued for home repair for an owner-occupied dwelling or dwelling unit as needed to make the dwelling or dwelling unit safe, sanitary, and secure, up to a maximum of \$5,000.

- a. Assistance will be denied if preexisting conditions are the cause of the damage.
- b. Repairs to rental dwellings or dwelling units or landlord-owned equipment are excluded under this program.
- c. Assistance may be authorized for:
 - (1) The repair of structural components, such as the foundation and roof.
 - (2) The repair of floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.
 - (3) Mitigation measures.
 - (4) Debris removal, including trees.
 - (5) Bathroom, including toilet, sink, and tub/shower.
 - (6) Sump pump installation (in a flood event only).
 - (7) Electrical or mechanical repairs.
 - (8) Water heater.
 - (9) Heating systems.
 - (10) Air-conditioning systems.
 - (11) Water well repair for dwellings or dwelling units with no other source of water available.
 - (12) Water softener repair.

58.5(3) Temporary housing assistance may be issued to a household for lodging at a licensed establishment, such as a hotel or motel. The household's home must be considered to be destroyed, uninhabitable, inaccessible, or unavailable to the household. Total temporary housing assistance may not exceed \$5,000 and is included as part of disaster assistance.

Temporary housing assistance may also be granted for rental unit application fees, deposits, and first month's rent for a new dwelling.

58.5(4) Replacement, repair, or provision of other items of necessity may be approved by the department on a case-by-case basis, up to a maximum of \$5,000.

[ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.6(29C) Eligibility determination and payment.

58.6(1) The contracted entity or designee shall confirm that the bona fide address provided on the application is a valid address and is reasonably believed to be in the disaster-affected area. The department or contracted entity reserves the right to view the damaged property prior to providing any assistance pursuant to IIAGP.

58.6(2) Designated staff in the department shall:

- a. Monitor applicants' names and addresses as reports are submitted by the administrative entity.
- b. Monitor, review, and provide timely submission of invoices by the administrative entity for payment and shall process appeals.

58.6(3) For applications with a voucher or reimbursement request, the department or its designee shall:

- a. Determine eligibility and the amount of payment within the rules of the program.
- b. Notify the applicant household of the eligibility decision in accordance with notice requirements in 441—Chapter 16.
- c. Authorize vouchers to an eligible household to purchase needed goods and services.
- d. Pay vendors for goods and services purchased with vouchers.

[ARC 9128B, IAB 10/6/10, effective 10/1/10; ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.7(29C) Contested cases.

58.7(1) *Reconsideration.*

a. The household may request reconsideration of decisions regarding eligibility and the amount of assistance awarded.

b. To request reconsideration, the household shall submit a written request to the DHS Division of Field Operations—Emergency Assistance, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 30 days of the date of the letter notifying the household of the department's decision.

c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within 30 days of receipt of the request.

58.7(2) *Appeal.* The household may appeal the department's reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), or in any form that provides comparable information, to the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 30 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency.

[ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.8(29C) Discontinuance of program.

58.8(1) *Deferral to federal assistance.* Upon declaration of a disaster by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121 to 5207, the Iowa individual assistance grant program administered under this chapter shall be discontinued in the geographic area designated by the federal individual assistance program. Upon issuance of the presidential declaration:

- a. No more applications shall be accepted.
- b. Any applications that are in process but are not yet approved shall be denied.

c. Persons seeking assistance under this program shall be advised to apply for federal disaster assistance.

58.8(2) Exhaustion of funds. The program shall be discontinued when funds available for the program have been exhausted. To ensure equitable treatment, applications for assistance shall be approved on a first-come, first-served basis until all funds have been depleted. “First-come, first-served” is determined by the date the application is approved for payment.

a. *Partial payment.* Because funds are limited, applications may be approved for less than the amount requested. Payment cannot be approved beyond the amount of funds available.

b. *Reserved funds.* A portion of allocated funds shall be reserved for final appeal decisions reversing the department’s denial that are received after funds for the program have been awarded.

c. *Untimely applications.* Applications received after the program is discontinued shall be denied. [ARC 6850C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code chapter 29C.

441—58.9 to 58.20 Reserved.

DIVISION II
IOWA DISASTER CASE MANAGEMENT

441—58.21(29C) Purpose. The purpose of these rules is to guide the provision of the Iowa disaster case management (IDCM) program during the time of emergency disaster for individual assistance when a disaster is proclaimed by the governor of the state of Iowa. [ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.22(29C) Definitions.

“*Contracted entity*” means an entity chosen by the department as the contracted administrator for the IDCM program.

“*Emergency management coordinator*” means the person appointed by the local emergency management commission pursuant to Iowa Code sections 29C.9 and 29C.10 to be responsible for development of the countywide emergency operations plan and for coordination and assistance to government officials when an emergency or disaster occurs.

“*Household*” means all adults and children who lived in the pre-disaster residence who request assistance, as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“*Necessary services*” means the guidance and advice in obtaining a service, or assistance in obtaining resources from various providers for any other activity that addresses a serious need. [ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.23(29C) Program implementation.

58.23(1) Disaster proclamation. The Iowa disaster case management (IDCM) program shall be implemented when the governor issues a proclamation of a state of emergency disaster that authorizes individual assistance.

a. The program shall be in effect only in those counties named in the proclamation.

b. The program shall commence on the day following the governor’s disaster proclamation and shall be provided for a period of up to 180 days from the date of proclamation.

c. The program may be extended in intervals up to 90 days when adequate justification is presented to the department, but not to exceed 730 days from the date of the proclamation.

d. If the disaster transforms to become a presidentially declared disaster and a Federal Emergency Management Agency (FEMA) disaster care management (DCM) grant is approved, then assistance may be provided for a period of up to 24 months from the date of the proclamation.

e. The reporting of the numbers of contacts, cases opened, cases pending, cases closed, and other required reports requested by the department shall be submitted with a frequency determined by the department.

f. Audits of disaster case files, as well as cost management and expenditures, may be randomly performed by the department without notice.

58.23(2) Contracting. The administrative entity currently under contract for the Iowa disaster aid individual assistance grant program (IIAGP) shall receive an amended contract to specify administration of the IDCM program.

a. Future contract renewals shall be inclusive with the IIAGP and as amended to include the IDCM program.

b. If a local contracted entity is under contract with the state to provide other services or is implementing a state or federal program and the contract contains a sufficient surety bond or other adequate financial responsibility provision, the department shall accept the existing surety bond or financial responsibility provisions in lieu of applying a new or additional surety bond or financial responsibility requirement.

c. The contracted entity shall coordinate activities with emergency management coordinators and voluntary organizations active in the disaster while the program is active. The contracted entity may subcontract with other entities to provide disaster case management with the approval of the department. [ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

441—58.24(29C) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

58.24(1) The household's residence was located in the area identified in the disaster proclamation during the designated incident period and the household verifies occupancy at that residence.

58.24(2) Household members are citizens of the United States or are legally residing in the United States.

58.24(3) The household has disaster-related needs that represent a burden that the family is unable to resolve.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.25(29C) Services. Disaster case management is a time-limited resource and process that involves a partnership between a case manager and a household impacted by a disaster (also known as a client) to develop and carry out a disaster recovery plan. This partnership provides the client with a single point of contact to facilitate access to a broad range of resources, promoting sustainable assistance for individuals and a household's recovery. These services are client-focused and provided in a manner consistent with standards for trauma-informed practice in human services.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.26(29C) Disaster-caused unmet needs. A disaster-caused unmet need is an unresourced item, support, or assistance that has been assessed by a representative from a local, state, tribal, federal agency, voluntary, or faith-based organization and that is needed for the client to recover from the disaster. Unmet disaster-caused needs may also include basic and immediate needs, such as food, clothing, shelter, or first aid, and long-term needs, such as financial, physical, emotional or spiritual well-being.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.27(29C) Resources. Applicable resources may include, but not be limited to, insurance payments, state assistance, voluntary/faith-based and local community assistance, federal disaster assistance, small business administration loans, and personal resources.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.28(29C) Standards and policies.

58.28(1) Access. The contracted entity shall provide clients with ease of access to disaster case management services.

58.28(2) Confidentiality and duplications of benefits.

a. The contracted entity shall have policies and procedures to meet requirements regarding maintaining confidentiality set forth by the department.

b. The contracted entity shall develop memorandums of agreement, memorandums of understanding, and release of information that will allow coordinated case advocacy and services and prevent the duplication of benefits.

58.28(3) Engagement. The case manager shall create a sustainable, trusting partnership with the client.

58.28(4) Screening. The case manager shall perform screening to determine eligibility and disaster-related unmet needs.

58.28(5) Intake and assessment. The case manager shall perform intake and assessment procedures to triage disaster-related needs of eligible households.

a. A case manager shall conduct an assessment specifically seeking targeted information to identify a client's disaster-related needs.

b. An assessment should focus on planning for recovery and meeting recovery goals.

c. An assessment should be conducted in person, when feasible, and should follow all standards for confidentiality and engagement.

58.28(6) Recovery planning.

a. A recovery plan should outline tasks for both the client and case manager based on an assessment and documentation of needed services.

b. The plan should identify priority needs and connect the client with resources, establish benchmarks and goals to measure progress toward recovery, and outline a case closure procedure.

c. The plan should be a joint effort between the case manager and the client.

d. The case manager should explain the available options, the resource and recovery alternatives, and the support services offered by the case manager.

58.28(7) Action and advocacy. The case manager's role in recovery includes: providing, referring or arranging for needed services and resources; verifying unmet needs, completing documentation and checking duplication of benefits; and actively advocating for the client through presentation, participation in recovery groups and interface with government and nongovernment resource providers.

58.28(8) Monitoring. Monitoring the services allows the case manager to keep documents up to date, to determine if the chosen resources are providing the services needed, and to evaluate whether adjustments are needed.

58.28(9) Closure.

a. Closure procedures should be outlined in the recovery plan and the roles and responsibilities of the client and case manager clearly defined.

b. Case closure acknowledges the recovery goals achieved, recognizes the progress made toward unmet goals, and identifies needed resources to continue progress.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.29(29C) Planning and training. Training shall adhere to the disaster case management criteria, as prescribed by the federal Administration for Children and Families, and follow the disaster case management guidelines as designed by the Iowa disaster human resource council or the approved rules of the department. The department shall request from the executive council of the state of Iowa funds to perform training in disaster case management as requested and required to prepare for disaster response.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.30(29C) Payment for services.

58.30(1) The department will negotiate payment with the contracted entity when the contract is established. Payment will be based on the contracted entity's actual direct and indirect costs.

58.30(2) The department will accept the contracted entity's federally approved indirect cost rates as required by the federal Office of Management and Budget (OMB).

58.30(3) The local administrative entity may draw down grant funding to pay valid claims on at least a weekly basis.

58.30(4) Exhaustion of funds. The program shall be discontinued when the funds available for the program have been exhausted. The department will notify the contracted entity of the total available

funds for the IDCM program once funds have been approved by the executive council. To ensure equitable treatment, assistance shall be approved on a first-come, first-served basis until all funds have been exhausted.

[ARC 3058C, IAB 5/10/17, effective 7/1/17]

441—58.31(29C) Contested cases.

58.31(1) Reconsideration.

- a. The household may request reconsideration of decisions regarding eligibility.
- b. To request reconsideration, the household shall submit a written request to the DHS Division of Field Operations—Emergency Assistance, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 30 days of the date of the letter notifying the household of the contracted entity’s decision.
- c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within 30 days of receipt of the request.

58.31(2) Appeal. The household may appeal the department’s reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), or in any form that provides comparable information, to the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 30 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code sections 234.6 and 29C.20B.

441—58.32 to 58.40 Reserved.

DIVISION III
TEMPORARY MEASURES RELATED TO DISASTERS
Rescinded IAB 5/10/17, effective 7/1/17

441—58.41 to 58.50 Reserved.

DIVISION IV
IOWANS HELPING IOWANS UNMET NEEDS DISASTER ASSISTANCE PROGRAM
Rescinded IAB 5/10/17, effective 7/1/17

441—58.51 to 58.60 Reserved.

DIVISION V
TICKET TO HOPE PROGRAM
Rescinded IAB 5/10/17, effective 7/1/17

441—58.61 to 58.68 Reserved.

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CHAPTER 80
PROCEDURE AND METHOD OF PAYMENT
[Prior to 7/1/83, Social Services[770] Ch 80]

441—80.1(249A) The fiscal agent function in medical assistance. Rescinded IAB 5/25/05, effective 7/1/05.

441—80.2(249A) Submission of claims. Providers of medical and remedial care participating in the program shall submit claims for services rendered to the Iowa Medicaid enterprise on at least a monthly basis. All nursing facilities and providers of home- and community-based services shall submit claims for services after the end of the calendar month in which the services are provided. Following audit of the claim, Iowa Medicaid will make payment to the provider of care.

80.2(1) Electronic submission. Providers are required to submit claims electronically whenever possible.

a. When filing electronic claims, pharmacies shall use the format prescribed by the National Council for Prescription Drug Programs.

b. Claims submitted electronically shall be filed on the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12N 837 transaction, Health Care Claim.

(1) Providers listed as filing claims on Form CMS-1500 or on the Claim for Targeted Medical Care shall file claims on the professional version of the 837 Health Care Claim.

(2) Providers listed as filing claims on Form CMS-1450 or UB04 shall file the institutional version of the 837 Health Care Claim.

(3) Dentists shall file the dental version of the 837 Health Care Claim.

(4) Pharmacists providing drugs and injections shall use the format prescribed by the National Council for Prescription Drug Programs.

c. If a claim submitted electronically requires attachments or supporting clinical documentation and a national electronic attachment has not been adopted, the provider shall:

(1) Use the Iowa Medicaid portal access (IMPA) system to submit supporting documents when billing Medicaid fee for service claims; and

(2) Reference the attachment control number submitted on the ASC X12N 837 electronic transaction.

80.2(2) Claim forms. Claims for payment for services provided recipients shall be submitted on Form CMS-1500, Health Insurance Claim Form, except as noted below.

a. The following providers shall submit claims on Form UB-04, CMS-1450:

(1) Home health agencies providing services other than home- and community-based services.

(2) Hospitals providing inpatient care or outpatient services, including inpatient psychiatric hospitals.

(3) Psychiatric medical institutions for children.

(4) Rehabilitation agencies.

(5) Hospice providers.

(6) Medicare-certified nursing facilities.

(7) Nursing facilities for the mentally ill.

(8) Special population nursing facilities as defined in 441—Chapter 81.

(9) Out-of-state nursing facilities.

(10) Health insurance premium payment (HIPP) providers.

b. All other nursing facilities and intermediate care facilities for persons with an intellectual disability shall file claims using an electronic version of Form UB-04 CMS-1450.

c. Pharmacies shall submit claims on the Universal Pharmacy Claim Form when filing paper claims.

d. Dentists shall submit claims on the dental claim form approved by the American Dental Association.

e. Providers of home- and community-based waiver services, including home health agencies, shall submit claims on Form 470-2486. In the event of the death of the member, the case manager or service worker shall sign and date the claim form if the services were delivered.

f. Case management providers billing services provided pursuant to 441—Chapter 90 to fee-for-service members shall submit claims using a HIPAA-compliant electronic claim.

g. For fee-for-service members, providers billing claims for Medicare beneficiaries that do not cross over electronically to Iowa Medicaid must submit the following electronically, in accordance with the All Providers, IV. Billing Iowa Medicaid manual, located at dhs.iowa.gov/sites/default/files/All-IV.pdf:

(1) Form UB-04.

(2) Form CMS-1500. The Explanation of Medicare Benefits (EOMB) is only required when requested by Iowa Medicaid.

h. For managed care members, providers billing claims for Medicare beneficiaries that do not cross over electronically must submit the following electronically:

(1) Form UB-04 and the Explanation of Medicare Benefits (EOMB); and

(2) Form CMS-1500 and the Explanation of Medicare Benefits (EOMB).

i. Health insurance premium payment (HIPP) providers shall submit Form 470-5475 along with an explanation of benefits (EOB).

80.2(3) Providers shall purchase their supplies of forms CMS-1450 and CMS-1500 for use in billing. [ARC 9403B, IAB 3/9/11, effective 5/1/11; ARC 9724B, IAB 9/7/11, effective 9/1/11; ARC 9889B, IAB 11/30/11, effective 1/4/12; ARC 2165C, IAB 9/30/15, effective 12/1/15; ARC 3159C, IAB 7/5/17, effective 7/1/17; ARC 3296C, IAB 8/30/17, effective 10/4/17; ARC 3494C, IAB 12/6/17, effective 1/10/18; ARC 4751C, IAB 11/6/19, effective 12/11/19; ARC 5248C, IAB 11/4/20, effective 1/1/21; ARC 6851C, IAB 2/8/23, effective 4/1/23]

441—80.3(249A) Payment from other sources. This rule applies to claims for the department, managed care organizations, and the Public Health Associate Program (PHAP).

80.3(1) Payments deducted. The amount of any payment made directly to the provider of care by the recipient, relatives, or any source shall be deducted from the established cost standard for the service provided to establish the amount of payment to be made by Iowa Medicaid.

80.3(2) Third-party liability.

a. When a third-party liability for medical expenses exists, this resource shall be utilized for payment of a claim before the Medicaid program makes payment unless:

(1) The department pays the total amount allowed under the Medicaid payment schedule and then seeks reimbursement from the liable third party. This “pay and chase” provision applies to claims for:

1. Preventive pediatric services, and

2. All services provided to a person for whom there is court-ordered medical support.

(2) Otherwise authorized by the department.

b. All claims must be clean claims. A clean claim is defined as a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment of the claim.

80.3(3) Recovery from third parties legally responsible to pay for health care. Parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall:

a. No later than 60 days after receiving any inquiry by the state regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of the item or service, respond to such inquiry, pursuant to 42 U.S.C. Section 1396a(25)(I)(iii), effective March 13, 2022.

b. Agree not to deny any claim submitted by the state solely because of the date of submission of the claim, the type or format of the claim form, a failure to present proper documentation at the point of sale that is the basis of the claim, or, in the case of a responsible third party (other than the original Medicare fee-for-service program under Parts A and B of 42 U.S.C. Chapter 7, Subchapter XVIII, a Medicare Advantage plan offered by a Medicare Advantage organization under Part C of 42 U.S.C. Chapter 7, Subchapter XVIII, a reasonable cost of reimbursement plan under 42 U.S.C. Section 1395mm,

a health care prepayment plan under 42 U.S.C. Section 1395I, or a prescription drug plan (PDP) offered by a PDP sponsor under Part D of 42 U.S.C. Chapter 7, Subchapter XVIII), a failure to obtain a prior authorization for the item or service for which the claim is being submitted, if both of the following conditions are met:

(1) The claim is submitted to the entity by the state within the three-year period beginning on the date on which the item or service was furnished.

(2) Any action by the state to enforce its rights with respect to the claim is commenced within six years of the date that the claim was submitted by the state.

c. Reimburse the Medicaid program within 90 days of the request for repayment.

d. Agree not to deny any claim submitted by the state solely because of lack of prior authorization. [ARC 7547B, IAB 2/11/09, effective 3/18/09; ARC 6022C, IAB 11/3/21, effective 1/1/22; ARC 6851C, IAB 2/8/23, effective 4/1/23]

441—80.4(249A) Time limit for submission of claims and claim adjustments.

80.4(1) *Submission of claims.* Payment will not be made on any claim when the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by Iowa Medicaid exceeds 365 days. The department shall consider claims submitted beyond the 365-day limit for payment only if retroactive eligibility on newly approved cases is made that exceeds 365 days or if attempts to collect from a third-party payer delay the submission of a claim. In the case of retroactive eligibility, the claim must be received within 365 days of the first notice of eligibility by the department.

80.4(2) *Claim adjustments and resubmissions.* A provider's request for an adjustment to a paid claim or resubmission of a denied claim must be received by Iowa Medicaid within 365 days from the date the claim was last adjudicated in order to have the adjustment or resubmission considered. In no case will a claim be paid if the claim is received beyond two years from the date of service.

80.4(3) *Definition.* For purposes of this rule, a claim is "received" when entered into the department's payment system with an action of pay, deny, or suspend. Any claim returned to the provider without such action is not "received."

[ARC 1155C, IAB 10/30/13, effective 1/1/14; ARC 6851C, IAB 2/8/23, effective 4/1/23]

441—80.5(249A) Authorization process.

80.5(1) *Identification cards.* The department shall issue a Medical Assistance Eligibility Card to members for use in securing medical and health services available under the program except as provided in 441—Chapter 76.

a. The department shall issue the Medical Assistance Eligibility Card:

(1) When the member's eligibility is initially determined.

(2) Upon the member's request for replacement of a lost, stolen, or damaged card.

b. The Medical Assistance Eligibility Card is valid only for months in which the member has established eligibility, as indicated on the department's eligibility verification system (ELVS). Payment will be made for services provided to an ineligible person when ELVS indicates that the person was eligible for the period in which the service was provided.

80.5(2) *Third-party liability.* Rescinded IAB 2/11/09, effective 3/18/09.

[ARC 7547B, IAB 2/11/09, effective 3/18/09; ARC 6851C, IAB 2/8/23, effective 4/1/23]

441—80.6(249A) Payment to provider—exception. Payments for medical services may be made only to the provider of the services except as provided below:

80.6(1) *Medical assistance corrective payments.* Payment may be made to the client or county relief agency in accordance with 441—Chapter 75.

80.6(2) *Assignment.* Payment may be made in accordance with an assignment to a county for medical services received while the recipient was receiving interim assistance or while an appeal of a denial of medical assistance was pending.

80.6(3) *Business agent of provider.* Payment may be made to a business agent that furnishes statements and receives payments in the name of the provider if the agent's compensation is:

a. Related to the cost of processing the billing.

b. Not related on a percentage or other basis to the amount that is billed or collected.

c. Not dependent upon the collection of the payment.
 [ARC 6851C, IAB 2/8/23, effective 4/1/23]

441—80.7(249A) Health care data match program. As a condition of doing business in Iowa, health insurers shall provide, upon the request of the state, information with respect to individuals who are eligible for or are provided medical assistance under the state's medical assistance state plan to determine (1) during what period the member or the member's spouse or dependents may be or may have been covered by a health insurer and (2) the nature of the coverage that is or was provided by the health insurer. This requirement applies to self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406), service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

80.7(1) Agreement required. The parties shall sign a data use agreement for the purposes of this rule. A data use agreement shall prescribe the specific detail elements required, in addition to any privacy protections, in the manner in which information shall be provided to the department of human services, or its designee, and the acceptable uses of the information provided.

a. The initial provision of data shall include the data necessary to enable the department or its designee to match covered persons and identify third-party payers for the two-year period before the initial provision of the data. The data shall include the name, address, and identifying number of the plan.

b. Ongoing monthly matches may be limited to changes in the data previously provided, including additional covered persons, with the effective dates of the changes.

80.7(2) Confidentiality of data. The exchange of information carried out under this rule shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to:

a. The federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

b. Regulations promulgated in accordance with that Act and published in 45 CFR Parts 160 through 164 as amended to April 11, 2022.

[ARC 1070C, IAB 10/2/13, effective 10/1/13; ARC 6851C, IAB 2/8/23, effective 4/1/23]

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[◊] Two or more ARCs

CHAPTER 82
INTERMEDIATE CARE FACILITIES FOR PERSONS
WITH AN INTELLECTUAL DISABILITY

[Prior to 7/1/83, Social Services[770] Ch 82]

[Prior to 2/11/87, Human Services[498]]

441—82.1(249A) Definition.

“*Department*” means the Iowa department of human services.

“*Intermediate care facility for persons with an intellectual disability (ICF/ID)*” means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

“*Intermediate care facility for persons with an intellectual disability level of care*” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009 as amended to March 29, 2022; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

“*Intermediate care facility for persons with medical complexity*” means an intermediate care facility for persons with an intellectual disability which provides health and rehabilitation services to individuals who require a skilled nursing level of care, have either a multiple organ dysfunction or severe single organ dysfunction, and require daily use of medical resources or technology.

“*Managed care organization*” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 4052C, IAB 10/10/18, effective 9/12/18; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as an intermediate care facility for persons with an intellectual disability by the department of inspections and appeals under the department of inspections and appeals rules found in 481—Chapter 64. The facility shall meet the following conditions of participation:

82.2(1) Governing body and management.

a. Governing body. The facility shall identify an individual or individuals to constitute the governing body of the facility. The governing body shall:

- (1) Exercise general policy, budget, and operating direction over the facility.
- (2) Set the qualifications (in addition to those already set by state law) for the administrator of the facility.
- (3) Appoint the administrator of the facility.

b. Compliance with federal, state, and local laws. The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

c. Client records.

(1) The facility shall develop and maintain a record-keeping system that includes a separate record for each client and that documents the clients’ health care, active treatment, social information, and protection of the client’s rights.

(2) The facility shall keep confidential all information contained in the clients’ records, regardless of the form or storage method of the records.

(3) The facility shall develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record shall make it legibly, date it, and sign it.

(5) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility shall provide each identified residential living unit with appropriate aspects of each client's record.

d. Services provided under agreements with outside sources.

(1) If a service required under this rule is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

1. Contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

2. Provide that the facility is responsible for ensuring that the outside services meet the standards for quality of services contained in this rule.

(3) The facility shall ensure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/ID, the ICF/ID remains directly responsible for the standards relating to physical environment that are specified in subrule 82.2(7), paragraphs "a" to "g," "j," and "k."

e. Disclosure of ownership. The facility shall supply to the licensing agency full and complete information, and promptly report any changes which would affect the current accuracy of the information, as to identify:

(1) Each person having a direct or indirect ownership interest of 5 percent or more in the facility and the owner in whole or in part of any property or assets (stock, mortgage, deed of trust, note or other obligation) secured in whole or in part by the facility.

(2) Each officer and director of the corporation, if the facility is organized as a corporation.

(3) Each partner, if the facility is organized as a partnership.

82.2(2) Client protections.

a. Protection of clients' rights. The facility shall ensure the rights of all clients. Therefore, the facility shall:

(1) Inform each client, parent (if the client is a minor), or legal guardian of the client's rights and the rules of the facility.

(2) Inform each client, parent (if the child is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment.

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process.

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities.

(5) Ensure that clients are not subjected to physical, verbal, sexual, or psychological abuse or punishment.

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints.

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs.

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities.

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail.

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans.

(11) Ensure clients the opportunity to participate in social, religious, and community group activities.

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in the client's own clothing each day.

(13) Permit a husband and wife who both reside in the facility to share a room.

b. Client finances.

(1) The facility shall establish and maintain a system that ensures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record shall be available on request to the client, parents (if the client is a minor), or legal guardian.

c. Communication with clients, parents, and guardians. The facility shall:

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate.

(2) Answer communications from clients' families and friends promptly and appropriately.

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate.

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy.

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations.

(6) Notify promptly the client's parents or guardian of any significant incidents or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

d. Staff treatment of clients.

(1) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

1. Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

2. Staff shall not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

3. The facility shall prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility shall ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with state law through established procedures.

(3) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations shall be reported to the administrator or designated representative or to other officials in accordance with state law within five working days of the incident, and, if the alleged violation is verified, appropriate corrective action shall be taken.

82.2(3) Facility staffing.

a. Qualified intellectual disability professional. Each client's active treatment program shall be integrated, coordinated and monitored by a qualified intellectual disability professional who has at least one year of experience working directly with persons with an intellectual disability or other developmental disabilities and is one of the following:

(1) A doctor of medicine or osteopathy.

(2) A registered nurse.

(3) An individual who holds at least a bachelor's degree in a professional category specified in 82.2(3) "b"(5).

b. Professional program services.

(1) Each client shall receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff shall work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(3) Professional program staff shall participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff shall participate in ongoing staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff shall be licensed, certified, or registered, as applicable, to provide professional services by the state in which the staff practices. Those professional program staff who do not fall under the jurisdiction of state licensure, certification, or registration requirements shall meet the following qualifications:

1. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

2. To be designated as an occupational therapy assistant, an individual shall be eligible for certification as an occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

3. To be designated as a physical therapist, an individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

4. To be designated as a physical therapy assistant, an individual shall be eligible for registration as a physical therapy assistant by the American Physical Therapy Association or be a graduate of a two-year college-level program approved by the American Physical Therapy Association or another comparable body.

5. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school.

6. To be designated as a social worker, an individual shall hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body or hold a bachelor of social work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

7. To be designated as a speech-language pathologist or audiologist, an individual shall be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language Hearing Association or another comparable body or meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

8. To be designated as a professional recreation staff member, an individual shall have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

9. To be designated as a professional dietitian, an individual shall be eligible for registration by the Academy of Nutrition and Dietetics.

10. To be designated as a human services professional, an individual shall have at least a bachelor's degree in a human services field (including, but not limited to, sociology, special education, rehabilitation counseling or psychology).

(6) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of 82.2(3)"b"(5) are not required except for qualified intellectual disability professionals who must meet the requirements set forth in 82.2(3)"a."

c. Facility staffing.

(1) The facility shall not depend upon clients or volunteers to perform direct care services for the facility.

(2) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing: clients for whom a physician has ordered a medical care plan; clients who are aggressive, assaultive or security risks; more than 16 clients; or fewer than 16 clients within a multi-unit building.

(3) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing: clients for whom a physician has not ordered a medical care plan; clients who are not aggressive, assaultive or security risks; and 16 or fewer clients.

(4) The facility shall provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

d. Direct care (residential living unit) staff.

(1) The facility shall provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff shall be provided by the facility in the following minimum ratios of direct care staff to clients:

1. For each defined residential living unit serving children under the age of 12, severely and profoundly intellectually disabled clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff-to-client ratio is 1 to 3.2.

2. For each defined residential living unit serving moderately intellectually disabled clients, the staff-to-client ratio is 1 to 4.

3. For each defined residential living unit serving clients who function within the range of mild intellectual disability, the staff-to-client ratio is 1 to 6.4.

4. When there are no clients present in the living unit, a responsible staff member must be available by telephone.

e. Staff training program.

(1) The facility shall provide each employee with initial and continuing training that enables the employee to perform the employee's duties effectively, efficiently, and competently.

(2) For employees who work with clients, training shall focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff shall be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff shall be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

82.2(4) *Active treatment services.*

a. Active treatment.

(1) Each client shall receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this paragraph, that is directed toward: the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and the prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

b. Admissions, transfers, and discharge.

(1) Clients who are admitted by the facility shall be in need of and receiving active treatment services.

(2) Admission decisions shall be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation shall contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility shall have documentation in the client's record that the client was transferred or discharged for good cause and shall provide a reasonable time to prepare the client and the client's parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility shall develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies, and shall provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

c. Individual program plan.

(1) Each client shall have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the client's needs, as described by the comprehensive functional assessments required in 82.2(4) "c"(3), and designing programs that meet the client's needs.

(2) Appropriate facility staff shall participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. For those clients enrolled with a managed care organization, the client's case manager shall participate as appropriate and as allowed by the client. Participation by the client, the client's parents (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment shall take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and shall:

1. Identify the presenting problems and disabilities and, where possible, their causes.
2. Identify the client's specific developmental strengths.
3. Identify the client's specific developmental and behavioral management needs.
4. Identify the client's need for services without regard to the actual availability of the services needed.
5. Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and vocational skills as applicable.

(4) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by 82.2(4) "c"(3), and the planned sequence for dealing with those objectives. These objectives shall:

1. Be stated separately, in terms of a single behavioral outcome.
2. Be assigned projected completion dates.
3. Be expressed in behavioral terms that provide measurable indices of performance.
4. Be organized to reflect a developmental progression appropriate to the individual.
5. Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan shall specify:

1. The methods to be used.
2. The schedule for use of the method.
3. The person responsible for the program.

4. The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives.

5. The inappropriate client behaviors, if applicable.

6. Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan shall also:

1. Describe relevant interventions to support the individual toward independence.

2. Identify the location where program strategy information (which shall be accessible to any person responsible for implementation) can be found.

3. Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

4. Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan shall specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

5. Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

6. Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan shall be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

d. Program implementation.

(1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan shall be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

e. Program documentation.

(1) Data relative to accomplishment of the criteria specified in client individual program plan objectives shall be documented in measurable terms.

(2) The facility shall document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

f. Program monitoring and change.

(1) The individual program plan shall be reviewed at least by the qualified intellectual disability professional and revised as necessary, including, but not limited to, situations in which the client:

1. Has successfully completed an objective or objectives identified in the individual program plan.

2. Is regressing or losing skills already gained.

3. Is failing to progress toward identified objectives after reasonable efforts have been made.

4. Is being considered for training toward new objectives.

(2) At least annually, the comprehensive functional assessment of each client shall be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan shall be revised, as appropriate, repeating the process set forth in 82.2(4) "c."

(3) The facility shall designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who

have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

1. Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights.
2. Ensure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian.
3. Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes needs to be addressed.

(4) The provisions of 82.2(4) "f"(3) may be modified only if, in the judgment of the department of inspections and appeals, court decrees, state law or regulations provide for equivalent client protection and consultation.

82.2(5) Client behavior and facility practices.

a. Facility practices—conduct toward clients.

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures shall:

1. Promote the growth, development, and independence of the client.
2. Address the extent to which client choice will be accommodated in daily decision making, emphasizing self-determination and self-management, to the extent possible.
3. Specify client conduct to be allowed or not allowed.
4. Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients shall participate in the formulation of these policies and procedures.

(3) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

b. Management of inappropriate client behavior.

(1) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures shall be consistent with the provisions of 82.2(5) "a." These procedures shall:

1. Specify all facility-approved interventions to manage inappropriate client behavior.
2. Designate these interventions on a hierarchy to be implemented ranging from most positive or least intrusive to least positive or most intrusive.
3. Ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and have been demonstrated to be ineffective.

4. Address the use of time-out rooms, the use of physical restraints, the use of drugs to manage inappropriate behavior, the application of painful or noxious stimuli, the staff members who may authorize the use of specified interventions, and a mechanism for monitoring and controlling the use of these interventions.

(2) Interventions to manage inappropriate client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior shall never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior shall be incorporated into the client's individual program plan, in accordance with 82.2(4) "c"(4) and (5).

(5) Standing or as-needed programs to control inappropriate behavior are not permitted.

c. Time-out rooms.

(1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

1. The placement is a part of an approved systematic time-out program as required by 82.2(5) "b."

2. The client is under the direct constant visual supervision of designated staff.
3. The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

- (2) Placement of a client in a time-out room shall not exceed one hour.

- (3) Clients placed in time-out rooms shall be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

- (4) A record of time-out activities shall be kept.

d. Physical restraints.

- (1) The facility may employ physical restraint only:

1. As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied.

2. As an emergency measure, but only if absolutely necessary to protect the client or others from injury.

3. As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

- (2) Authorizations to use or extend restraints as an emergency shall be in effect no longer than 12 consecutive hours and shall be obtained as soon as the client is restrained or stable.

- (3) The facility shall not issue orders for restraint on a standing or as-needed basis.

- (4) A client placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints, shall be released from the restraint as quickly as possible, and a record of these checks and usage shall be kept.

- (5) Restraints shall be designated and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

- (6) Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two-hour period in which restraint is employed, and a record of the activity shall be kept.

- (7) Barred enclosures shall not be more than three feet in height and shall not have tops.

e. Drug usage.

- (1) The facility shall not use drugs in doses that interfere with the individual client's daily living activities.

- (2) Drugs used for control of inappropriate behavior shall be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically toward the reduction and eventual elimination of the behaviors for which the drugs are employed.

- (3) Drugs used for control of inappropriate behavior shall not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

- (4) Drugs used for control of inappropriate behavior shall be monitored closely, in conjunction with the physician and the drug regimen review requirement at 82.2(6) "j," for desired responses and adverse consequences by facility staff, and shall be gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

82.2(6) Health care services.

a. Physician services.

- (1) The facility shall ensure the availability of physician services 24 hours a day.

- (2) The physician shall develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan shall be integrated in the individual program plan.

- (3) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

1. Evaluation of vision and hearing.

2. Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

3. Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

4. Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by state law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this subrule.

b. Physician participation in the individual program plan. A physician shall participate in:

(1) The establishment of each newly admitted client's initial individual program plan.

(2) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

c. Nursing services. The facility shall provide clients with nursing services in accordance with their needs. These services shall include:

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process.

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan.

(3) For those clients certified as not needing a medical care plan, a review of their health status which shall:

1. Be by a direct physical examination.

2. Be by a licensed nurse.

3. Be on a quarterly or more frequent basis depending on client need.

4. Be recorded in the client's record.

5. Result in any necessary action including referral to a physician to address client health problems.

(4) Other nursing care as prescribed by the physician or as identified by client needs.

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to:

1. Training clients and staff as needed in appropriate health and hygiene methods.

2. Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control.

3. Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

d. Nursing staff.

(1) Nurses providing services in the facility shall have a current license to practice in the state.

(2) The facility shall employ or arrange for licensed nursing services sufficient to care for clients' health needs including those clients with medical care plans.

(3) The facility shall utilize registered nurses as appropriate and required by state law to perform the health services specified in this subrule.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it shall have a formal arrangement with a registered nurse to be available for verbal or on-site consultation with the licensed practical or vocational nurse.

(5) Nonlicensed nursing personnel who work with clients under a medical care plan shall do so under the supervision of licensed persons.

e. Dental services.

(1) The facility shall provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists, either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals shall participate in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility shall provide education and training in the maintenance of oral health.

f. Comprehensive dental diagnostic services. Comprehensive dental diagnostic services include:

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility unless the examination was completed within 12 months prior to admission.

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease.

(3) A review of the results of examination and entry of the results in the client's dental record.

g. Comprehensive dental treatment. The facility shall ensure comprehensive dental treatment services that include:

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist.

(2) Dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health.

h. Documentation of dental services.

(1) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

i. Pharmacy services. The facility shall provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

j. Drug regimen review.

(1) A pharmacist with input from the interdisciplinary team shall review the drug regimen of each client at least quarterly.

(2) The pharmacist shall report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist shall prepare a record of each client's drug regimen reviews and the facility shall maintain that record.

(4) An individual medication administration record shall be maintained for each client.

(5) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

k. Drug administration. The facility shall have an organized system for drug administration that identifies each drug up to the point of administration. The system shall ensure that:

(1) All drugs are administered in compliance with the physician's orders.

(2) All drugs, including those that are self-administered, are administered without error.

(3) Unlicensed personnel are allowed to administer drugs only if state law permits.

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise.

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client.

(6) No client self-administers medications until the client demonstrates the competency to do so.

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with state law.

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

l. Drug storage and record keeping.

(1) The facility shall store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility shall keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self-administer drugs in accordance with 82.2(6) "k"(4) may have access to keys to their individual drug supply.

(3) The facility shall maintain records of the receipt and disposition of all controlled drugs.

(4) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in Schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq.).

(5) If the facility maintains a licensed pharmacy, the facility shall comply with the regulations for controlled drugs.

m. Drug labeling.

(1) Labeling of drugs and biologicals shall be based on currently accepted professional principles and practices, and shall include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility shall remove from use outdated drugs and drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client shall be immediately removed from the client's current medication supply if discontinued by the physician.

n. Laboratory services.

(1) For purposes of this subrule, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory shall meet the management requirements specified in 42 CFR 493.1407 as amended to March 29, 2022, and provide personnel to direct and conduct the laboratory services.

The laboratory director shall be technically qualified to supervise the laboratory personnel and test performance and shall meet licensing or other qualification standards established by the state with respect to directors of clinical laboratories.

The laboratory director shall provide adequate technical supervision of the laboratory services and ensure that tests, examinations and procedures are properly performed, recorded and reported.

The laboratory director shall ensure that the staff has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently; is sufficient in number for the scope and complexity of the services provided; and receives in-service training appropriate to the type of complexity of the laboratory services offered.

The laboratory technologists shall be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory shall meet the proficiency testing requirements specified in 42 CFR 493.801 as amended to March 29, 2022.

(4) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be an approved Medicare laboratory.

82.2(7) Physical environment.

a. Client living environment.

(1) The facility shall not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility shall not segregate clients solely on the basis of their physical disabilities. It shall integrate clients who have ambulation deficits or who are deaf, hard of hearing, blind, or have seizure disorders with others of comparable social and intellectual development.

b. Client bedrooms.

- (1) Bedrooms shall:
 1. Be rooms that have at least one outside wall.
 2. Be equipped with or located near toilet and bathing facilities.
 3. Accommodate no more than four clients unless granted a variance under 82.2(7)“b”(3).
 4. Measure at least 60 square feet per client in multiple-client bedrooms and at least 80 square feet in single-client bedrooms.

5. In all facilities initially certified or in buildings constructed or with major renovations or conversions, have walls that extend from floor to ceiling.

- (2) If a bedroom is below grade level, it shall have a window that is usable as a second means of escape by the client occupying the rooms and shall be no more than 44 inches measured to the windowsill above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches measured to the windowsill above the floor.

- (3) The department of inspections and appeals may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified intellectual disability professional certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours and documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

- (4) The facility shall provide each client with:
 1. A separate bed of proper size and height for the convenience of the client.
 2. A clean, comfortable mattress.
 3. Bedding appropriate to the weather and climate.
 4. Functional furniture appropriate to the client’s needs, and individual closet space in the client’s bedroom with clothes racks and shelves accessible to the client.

c. Storage space in bedroom. The facility shall provide:

- (1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety.

- (2) Suitable storage space, accessible to clients, for personal possessions such as televisions, radios, prosthetic equipment and clothing.

d. Client bathrooms. The facility shall:

- (1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients.

- (2) Provide for individual privacy in toilets, bathtubs, and showers.

- (3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110 degrees Fahrenheit.

e. Heating and ventilation.

- (1) Each client bedroom in the facility shall have at least one window to the outside and direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

- (2) The facility shall maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means and ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

f. Floors. The facility shall have:

- (1) Floors that have a resilient, nonabrasive, and slip-resistant surface.

- (2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor.

- (3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

g. Space and equipment. The facility shall:

- (1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations

if they are conducted in the facility) to enable staff to provide clients with needed services as required by this rule and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

h. Emergency plan and procedures.

(1) The facility shall develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility shall communicate, periodically review, make the plan available, and provide training to the staff.

i. Evacuation drills.

(1) The facility shall hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to ensure that all personnel on all shifts are trained to perform assigned tasks; ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility shall actually evacuate clients during at least one drill each year on each shift; make special provisions for the evacuation of clients with physical disabilities; file a report and evaluation on each evacuation drill; and investigate all problems with evacuation drills, including accidents, and take corrective action. During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities shall meet the requirements of 82.2(7) "i"(1) and (2) for any live-in and relief staff they utilize.

j. Fire protection.

(1) General.

1. Except as specified in 82.2(7) "i"(2), the facility shall meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.

2. The department of inspections and appeals may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

3. A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds shall have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) Exceptions.

1. For facilities that meet the LSC definition of a health care occupancy, the Centers for Medicare and Medicaid Services may waive, for a period it considers appropriate, specific provisions of the LSC if the waiver would not adversely affect the health and safety of the clients and rigid application of specific provisions would result in an unreasonable hardship for the facility.

The department of inspections and appeals may apply the state's fire and safety code instead of the LSC if the Secretary of the Department of Health and Human Services finds that the state has a code imposed by state law that adequately protects a facility's clients.

Compliance on November 28, 1982, with the 1967 edition of the LSC or compliance on April 18, 1986, with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the code.

2. For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the department of inspections and appeals may apply the state's fire and safety code as specified above.

k. Paint. The facility shall:

(1) Use lead-free paint inside the facility.

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

l. Infection control.

(1) The facility shall provide a sanitary environment to avoid sources and transmission of infections. There shall be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility shall implement successful corrective action in affected problem areas.

(3) The facility shall maintain a record of incidents and corrective actions related to infections.

(4) The facility shall prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

82.2(8) *Dietetic services.*

a. Food and nutrition services.

(1) Each client shall receive a nourishing, well-balanced diet including modified and specially prescribed diets.

(2) A qualified dietitian shall be employed either full-time, part-time or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility shall designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, shall prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet shall be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

b. Meal services.

(1) Each client shall receive at least three meals daily, at regular times comparable to normal mealtimes in the community with:

1. Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast.

2. Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under 82.2(8) "b"(1)"1."

(2) Food shall be served:

1. In appropriate quantity.

2. At appropriate temperature.

3. In a form consistent with the developmental level of the client.

4. With appropriate utensils.

(3) Food served to clients individually and uneaten shall be discarded.

c. Menus.

(1) Menus shall:

1. Be prepared in advance.

2. Provide a variety of foods at each meal.

3. Be different for the same days of each week and adjusted for seasonal change.

4. Include the average portion sizes for menu items.

(2) Menus for food actually served shall be kept on file for 30 days.

d. Dining areas and service. The facility shall:

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician.

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs.

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client.

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to ensure that each client receives enough food and to ensure that each client eats in a manner consistent with the client's developmental level.

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or physician.

This rule is intended to implement Iowa Code section 249A.12.
 [ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 5808C, IAB 7/28/21, effective 9/1/21; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.3(249A) Conditions of participation for intermediate care facilities for persons with an intellectual disability. All intermediate care facilities for persons with an intellectual disability must enter into a contractual agreement with the department which sets forth the terms under which they will participate in the program.

82.3(1) Procedures for establishing health care facilities as Title XIX facilities. All survey procedures and the certification process shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual."

- a. The facility shall obtain the applicable license from the department of inspections and appeals.
- b. The facility shall request an application, Form 470-0254, from the Iowa Medicaid provider services unit.
- c. The department shall transmit an application form and copies of standards to the facility.
- d. The facility shall complete its portion of the application form and submit it to the department.
- e. The department shall review the application form and forward it to the department of inspections and appeals.
- f. The department of inspections and appeals shall schedule and complete a survey of the facility.
- g. The department of inspections and appeals shall notify the facility of any deficiencies and ask for a plan for the correction of the deficiencies.
- h. The facility shall submit a plan of correction within ten days after receipt of written deficiencies from the health facilities division, department of inspections and appeals. This plan must be approved before the facility can be certified.
- i. The department of inspections and appeals shall evaluate the survey findings and plan of correction and either recommend the facility for certification or recommend denial of certification. The date of certification will be the date of approval of the plan of corrections.
- j. When certification is recommended, the department of inspections and appeals shall notify the department recommending terms and conditions of a provider agreement.
- k. The department shall review the certification data and:
 - (1) Transmit the provider agreement as recommended, or
 - (2) Transmit the provider agreement for a term less than recommended by the department of inspections and appeals or elect not to execute an agreement for reasons of good cause as defined in 82.3(2) "c."

82.3(2) Title XIX provider agreements. The health care facility must be recommended for certification by the Iowa department of inspections and appeals for participation as an intermediate care facility for persons with an intellectual disability before a provider agreement may be issued. All survey procedures and certification processes shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual." The effective date of a provider agreement may not be earlier than the date of certification.

- a. Terms of the agreement for facilities without deficiencies are as follows:
 - (1) The provider agreement shall be issued for a period not to exceed 12 months.
 - (2) The provider agreement shall be for the term of and in accordance with the provisions of certification, except that for good cause, the department may elect to execute an agreement for a term less than the period of certification, elect not to execute an agreement for reasons of good cause, or cancel an agreement.
- b. Terms of the agreement for facilities with deficiencies are as follows:

(1) A new provider agreement may be executed for a period not to exceed 60 days from the time required to correct deficiencies up to a period of 12 months.

(2) A new provider agreement may be issued for a period of up to 12 months subject to automatic cancellation 60 days following the scheduled date for correction unless required corrections have been completed or unless the survey agency finds and notifies the department that the facility has made substantial progress in correcting the deficiencies and has resubmitted in writing a new plan of correction acceptable to the survey agency.

(3) There will be no new agreement when the facility continues to be out of compliance with the same standard(s) at the end of the term of agreement.

c. The department may, for good cause, elect not to execute an agreement. Good cause shall be defined as a continued or repeated failure to operate an intermediate care facility for persons with an intellectual disability in compliance with rules and regulations of the program.

d. The department may at its option extend an agreement with a facility for two months under either of the following conditions:

(1) The health and safety of the residents will not be jeopardized thereby and the extension is necessary to prevent irreparable harm to the facility or hardship to the resident.

(2) It is impracticable to determine whether the facility is complying with the provisions and requirements of the provider agreement.

e. When it becomes necessary for the department to cancel or refuse to renew a Title XIX provider agreement, federal financial participation may continue for 30 days beyond the date of cancellation if the extension is necessary to ensure the orderly transfer of residents.

f. When the department of inspections and appeals survey indicates deficiencies in the areas of the Life Safety Code (LSC) or environment and sanitation, a timetable detailing corrective measures shall be submitted to the department of inspections and appeals before a provider agreement can be issued. This timetable shall not exceed two years from the date of initial certification and shall detail corrective steps to be taken and when corrections will be accomplished. The following shall apply in these instances.

(1) The department of inspections and appeals shall determine that the facility can make corrections within the two-year period.

(2) During the period allowed for corrections, the facility shall be in compliance with existing state fire safety and sanitation codes and regulations.

(3) The facility shall be surveyed at least semiannually until corrections are completed. The facility must have made substantial effort and progress in its plan of correction as evidenced by work orders, contracts, or other evidence.

82.3(3) Appeals of decertification. A facility may appeal a decertification action according to 441—subrule 81.13(28).

This rule is intended to implement Iowa Code section 249A.12.
[ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.4 Reserved.

441—82.5(249A) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report, Form 470-0030, to the department. These reports shall be based on the following rules.

82.5(1) Failure to maintain records. Failure to maintain and submit adequate accounting or statistical records shall result in termination or suspension of participation in the program.

82.5(2) Accounting procedures. Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases. Facilities which are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. The schedule shall be required when necessary for a fair presentation of expense attributable to intermediate care facility patients.

82.5(3) *Submission of reports.* The facility's cost report shall be received by the Iowa Medicaid provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3) "c."

b. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

c. Failure to timely submit the complete report shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid provider cost audit and rate setting unit.

d. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

82.5(4) *Payment at new rate.* When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report is postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department. Adjustments shall be included in the payment the third month after the receipt of the report.

82.5(5) *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Expenses which pertain to an entire year shall be properly amortized by month in order to be properly recorded for the annual fiscal year report. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

82.5(6) *Census of Medicaid members.* Census figures of Medicaid members shall be obtained on the last day of the month ending the reporting period.

82.5(7) *Patient days.* In determining inpatient days, a patient day is that period of service rendered a patient between the census-taking hours on two successive days, the day of discharge being counted only when the patient was admitted that same day.

82.5(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

82.5(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a member is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for inpatient days.

82.5(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, nursing services, and such services as supervision, feeding, incontinency, and similar services, for which the associated costs are in nursing service.

b. Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

c. Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to private-pay residents of items or services which are included in the medical assistance per diem will not be offset.

d. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

e. Laundry revenue shall be applied to laundry expense.

f. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

82.5(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are not allowed as reimbursable costs. These taxes are considered in computing the fee for services for proprietary institutions.

b. Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

c. Personal travel and entertainment are not allowed as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel which include both business and personal shall be prorated. Amounts that appear excessive may be limited after considering the specific circumstances. Records shall be maintained to substantiate the indicated charges.

d. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3) "c."

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions and depends upon the facts and circumstances of each case.

(3) Necessary—requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The base maximum allowed compensation for an administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is \$1,926 per month plus \$20.53 per month per licensed bed capacity for each bed over 60, not to exceed \$2,852 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of 5 percent or more.

On an annual basis, the maximum allowed compensation amounts for these administrators shall be increased or decreased by the inflation factor applied to facility rates.

(5) The maximum allowed compensation for an assistant administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility in facilities having a licensed capacity of 151 or more beds is 60 percent of the amount allowed for the administrator. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of 5 percent or more.

(6) The maximum allowed compensation for a director of nursing or any employee who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is 60 percent of the amount allowed for the administrator. Persons involved in ownership or relatives providing professional services shall be limited to rates prevailing in the community not to exceed 60 percent of the allowable rate for the administrator on a semiannual basis. Records shall be maintained in the same manner for an employee involved in ownership as are maintained for any employee of the facility. Ownership is defined as an interest of 5 percent or more.

(7) The maximum allowed compensation for employees as set forth in subparagraphs 82.5(11) "e"(4) to 82.5(11) "e"(6) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the intermediate care facility for persons with an intellectual disability for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

f. Management fees and home office costs shall be allowed only to the extent that they are related to patient care and replace or enhance but do not duplicate functions otherwise carried out in a facility.

g. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset as defined in the American Hospital Association Useful Life Guide, may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to subrule 82.5(12).

h. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to the fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

i. Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those which commonly are obtained by similar institutions from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by the institutions; and that the charge to the facility is in line with the charge for services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for the services, facilities, or supplies, the charges by the supplier shall be allowable costs.

j. A facility entering into a new or renewed rent or lease agreement on or after June 1, 1994, shall be subject to the provisions of this paragraph.

When the operator of a participating facility rents from a nonrelated party, the amount of rent expense allowable on the cost report shall be the lesser of the actual rent payments made under the terms of the lease or an annual reasonable rate of return applied to the cost of the facility. The cost of the facility shall be determined as the historical cost of the facility in the hands of the owner when the facility first entered the Iowa Medicaid program. Where the facility has previously participated in the program, the cost of the facility shall be determined as the historical cost of the facility, as above, less accumulated

depreciation claimed for cost reimbursement under the program. The annual reasonable rate of return shall be defined as one and one-half times the annualized interest rate of 30-year Treasury bonds as reported by the Federal Reserve Board on a weekly-average basis, at the date the lease was entered into.

When the operator of a participating facility rents the building from a related party, the amount of rent expense allowable on the cost report shall be limited to the lesser of the actual rent payments made under the terms of the lease or the amount of property costs that would otherwise have been allowable under the Iowa Medicaid program to an owner-provider of that facility.

The lessee shall submit a copy of the lease agreement, documentation of the cost basis used and a schedule demonstrating that the limitations have been met with the first cost report filed for which lease costs are claimed.

k. Each facility which supplies transportation services as defined in Iowa Code section 324A.1, subsection 1, shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules 761—Chapter 910 at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, public transit division, shall result in disallowance of vehicle costs and other costs associated with transporting residents.

l. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the public health department, 641—Chapter 201.

m. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.
- (4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,
2. The costs are reasonable expenditures for the services obtained,
3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
4. The facility prevails on the disputed issue.

n. Penalties or fines imposed by federal or state agencies are not allowable expenses.

o. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

82.5(12) Termination or change of owner.

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department with at least 60 days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

- (1) In the case of a partnership which is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new

partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion but terminates with respect to the leased portion.

b. No increase in the value of the property shall be allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

c. Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property shall not be allowed.

d. In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

e. A new owner or lessee wishing to claim a new rate of interest expense must submit documentation which verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next semiannual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities which have changed or will change ownership shall continue at the rate allowed the previous owner.

82.5(13) Assessed fee. The fee assessed pursuant to 441—Chapter 36 shall not be an allowable cost for cost reporting and audit purposes. In lieu of treating the fee as an allowable cost, a per diem assessment amount is added to the reimbursement rate calculated under subrule 82.5(14), not subject to the maximum allowable base cost or maximum rate set at the eightieth percentile. The per diem assessment amount will be calculated by dividing the annual assessment paid by the reported total patient days.

82.5(14) Payment to new facility. A facility receiving Medicaid ICF/ID certification on or after July 1, 1992, shall be subject to the provisions of this subrule.

a. A facility receiving initial Medicaid certification for ICF/ID level of care shall submit a budget for six months of operation beginning with the month in which Medicaid certification is given. The budget shall be submitted at least 30 days in advance of the anticipated certification date. The Medicaid per diem rate for a new facility shall be based on the submitted budget subject to review by the accounting firm under contract with the department. The rate shall be subject to a maximum set at the eightieth percentile of all participating community-based Iowa ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year. The state hospital schools shall not be included in the compilation of facility costs. The beginning rates for a new facility shall be effective with the date of Medicaid certification.

b. Initial cost report. Following six months of operation as a Medicaid-certified ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid

standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) Start-up costs. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, the costs must be capitalized as deferred charges and amortized over a five-year period.

Start-up costs include, for example, administrative and program staff salaries, heat, gas and electricity, taxes, insurance, mortgage and other interest, employee training costs, repairs and maintenance, and housekeeping.

(2) Organization costs. Organization costs are those costs directly related to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organization costs extend over more than one accounting period and affect the costs of future periods of operation. Organization costs must be amortized over a five-year period.

1. Allowable organization costs. Allowable organization costs include, but are not limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and bylaws, legal agreements, minutes of organization meetings, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders, and fees paid to states for incorporation.

2. Unallowable organization costs. The following types of costs are not considered allowable organization costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters' fees and commissions, accountant's or lawyer's fees; costs of qualifying the issues with the appropriate state or federal authorities; and stamp taxes.

c. Standardization of cost reporting period for new facilities.

(1) Facilities receiving initial certification between July 1 and December 31 (inclusive) shall submit three successive six-month cost reports covering their first 18 months of operation. The fourth six-month cost report shall cover the January 1 to June 30 period. Thereafter, the facility shall submit a cost report on an annual basis of July 1 to June 30.

(2) Facilities receiving initial certification between January 1 and June 30 (inclusive) shall submit two successive six-month cost reports covering the first 12 months of operation. The third six-month cost report shall cover the January 1 to June 30 period. Thereafter, the facility shall submit a cost report on an annual basis of July 1 to June 30.

(3) All facilities shall comply with the requirements of subrule 82.5(3) when submitting reports.

d. Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ICF/ID as described in subrule 82.5(14), the facility shall submit a cost report for the second six months of operation. An on-site audit of facility costs shall be performed by the accounting firm under contract with the department. Based on the audited cost report, a rate shall be established for the facility. This rate shall be considered the base rate until rebasing of facility costs occurs.

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year's maximum allowable base by the annual percentage increase of the Consumer Price Index.

(2) Each year's maximum allowable base cost represents the maximum amount that can be reimbursed.

e. Maximum rate. Facilities shall be subject to a maximum rate set at the eightieth percentile of the total per diem cost of all participating community-based ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year using cost reports on file December 31 of the previous year.

f. Incentive factor. New facilities which complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.5(14) "d," shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem cost for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the next annual period of operation.

(2) Facilities whose annual per unit cost decreased from the prior year shall be given their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

g. Reimbursement for first annual period. The reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index plus one.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, the facility shall receive as reimbursement in the following period the maximum allowable base as calculated.

(3) All calculated per diem rates shall be subject to the prevailing maximum rate.

82.5(15) Payment to new owner. An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established according to subrule 82.5(16). The facility may submit a report for the period of July 1 to June 30 or may submit two cost reports within the fiscal year provided the second report covers a period of at least six months ending on the last day of the fiscal year. The facility shall notify the department of the reporting option selected.

82.5(16) Payment to existing facilities. The following reimbursement limits shall apply to all non-state-owned ICFs/ID:

a. Each facility shall file a cost report covering the period from January 1, 1992, to June 30, 1992. This cost report shall be used to establish a reimbursement rate to be paid to the facility and shall be used to establish the base allowable cost per unit to be used in future reimbursement rate calculations. Subsequent cost reports shall be filed annually by each facility covering the 12 months from July 1 to June 30.

b. The reimbursement rate established based on the report covering January 1, 1992, to June 30, 1992, shall be calculated using the method in place prior to July 1, 1992, including inflation and incentive factors.

c. The audited per unit cost from the January 1, 1992, to June 30, 1992, cost report shall become the initial allowable base cost. A new maximum allowable base cost will be calculated each year as described in 82.5(14) "d."

d. Facilities which have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the following annual period.

(2) Facilities whose annual per unit cost decreased from the prior year shall receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

e. Administrative costs shall not exceed 18 percent of total facility costs. Administrative costs are comprised of those costs incurred in the general management and administrative functions of the facility. Administrative costs include, but are not necessarily limited to, the administrative portion of the following:

- (1) Administrator wages.
- (2) Business office wages.
- (3) Advertising and marketing wages.
- (4) Employer's taxes (administrative).

- (5) Group/life and retirement benefits (administrative staff).
- (6) Workers' compensation insurance (administrative staff).
- (7) Employment advertising and recruitment (administrative staff).
- (8) Criminal record checks (administrative staff).
- (9) Education and training (administrative staff).
- (10) Office supplies (administrative staff).
- (11) Telephone.
- (12) Equipment rental.
- (13) Home office costs.
- (14) Management fees.
- (15) Accounting fees.
- (16) Professional organization dues.
- (17) Licensing fees.
- (18) Information technology expenses.
- (19) Legal fees—direct patient-care-related.
- (20) Legal fees—other.
- (21) Working capital interest.
- (22) General liability insurance.
- (23) Travel, entertainment and auto expenses.
- (24) Advertising and public relations.
- (25) Other.

f. Facility rates shall be rebased using the cost report for the year covering state fiscal year 1996 and shall subsequently be rebased each four years. The department shall consider allowing special rate adjustments between rebasing cycles if:

- (1) An increase in the minimum wage occurs.
- (2) A change in federal regulations occurs which necessitates additional staff or expenditures for capital improvements, or a change in state or federal law occurs, or a court order with force of law mandates program changes which necessitate the addition of staff or other resources.
- (3) A decision is made by a facility to serve a significantly different client population or to otherwise make a dramatic change in program structure (documentation and verification will be required).
- (4) A facility increases or decreases licensed bed capacity by 20 percent or more.

g. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase which shall not exceed the percentage change in the Consumer Price Index.

h. State-owned ICFs/ID shall submit semiannual cost reports and shall receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index.

i. The projected reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, the facility shall receive as reimbursement in the following period the maximum allowable base as calculated.

82.5(17) Wage add-on factor. A wage add-on factor of \$8.86 per day for community-based ICFs/ID shall be included in rates effective July 1, 2022, and after, not subject to the maximum allowable cost ceiling in paragraph 82.5(14) "e," until rates are established using the cost reports for the period ending June 30, 2023.

a. In accordance with 2022 Iowa Acts, House File 2578, section 31, the entire wage add-on factor shall be used for wages and associated costs specific to wages, benefits, and required withholding of direct support professionals and frontline management.

b. The wage add-on factor of \$8.86 per day shall be added to the maximum allowable base rate in subparagraph 82.5(14)“d”(1) until the next rebase using cost reports for the period ending June 30, 2024.

c. The wage add-on factor of \$8.86 per day shall be added to the maximum allowable cost ceiling, eightieth percentile of costs of all participating facilities in paragraph 82.5(14)“e,” until the eightieth percentile maximum is established using the December 31, 2023, compilation for rates effective beginning July 1, 2024.

This rule is intended to implement Iowa Code sections 249A.12 and 249A.16.
[ARC 8207B, IAB 10/7/09, effective 12/1/09; ARC 8446B, IAB 1/13/10, effective 2/17/10; ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 0995C, IAB 9/4/13, effective 11/1/13; ARC 2886C, IAB 1/4/17, effective 2/8/17; ARC 6776C, IAB 12/28/22, effective 2/1/23; ARC 6852C, IAB 2/8/23, effective 4/1/23]

441—82.6(249A) Eligibility for services.

82.6(1) *Interdisciplinary team.* The initial evaluation for admission shall be conducted by an interdisciplinary team. The team shall consist of a physician, a social worker, and other professionals. At least one member of the team shall be a qualified intellectual disability professional.

82.6(2) *Evaluation.* The evaluation shall include a comprehensive medical, social, and psychological evaluation. The comprehensive evaluation shall include:

a. Diagnoses, summaries of present medical, social and where appropriate, developmental findings, medical and social family history, mental and physical functional capacity, prognoses, range of service needs, and amounts of care required.

b. An evaluation of the resources available in the home, family, and community.

c. An explicit recommendation with respect to admission or in the case of persons who make application while in the facility, continued care in the facility. Where it is determined that intermediate care facility for persons with an intellectual disability services are required by an individual whose needs might be met through the use of alternative services which are currently unavailable, this fact shall be entered in the record, and plans shall be initiated for the active exploration of alternatives.

d. An individual plan for care shall include diagnosis, symptoms, complaints or complications indicating the need for admission, a description of the functional level of the resident; written objective; orders as appropriate for medications, treatments, restorative and rehabilitative services, therapies, diet, activities, social services, and special procedures designed to meet the objectives; and plans for continuing care, including provisions for review and necessary modifications of the plan, and discharge.

e. Written reports of the evaluation and the written individual plan of care shall be delivered to the facility and entered in the individual’s record at the time of admission or, in the case of individuals already in the facility, immediately upon completion.

82.6(3) *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for persons with an intellectual disability upon the certification of a physician that there is a necessity for care at the facility. For clients enrolled with a managed care organization, authorization for admission must be obtained from the managed care organization prior to admission. Eligibility shall continue as long as a valid need for the care exists.

This rule is intended to implement Iowa Code section 249A.12.
[ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—82.7(249A) Initial approval for ICF/ID care.

82.7(1) *Referral through targeted case management.* Persons seeking ICF/ID placement shall be referred through targeted case management. The case management program shall:

a. Identify appropriate service alternatives;

b. Inform the person of the alternatives; and

c. Refer a person without appropriate alternatives to the department.

82.7(2) *Approval of placement by department.*

a. Within 30 days of receipt of a referral, the department shall:

- (1) Approve ICF/ID placement;
- (2) Offer a home- or community-based alternative; or
- (3) Refer the person back to the targeted case management program for further consideration of service needs.

b. Once ICF/ID placement is approved, including approval of ICF/ID level of care as described in subrule 82.7(3), the eligible person, or the person's representative, is free to seek placement in the facility of the person's or the person's representative's choice, subject to the provision of ICF/ID services through managed care pursuant to 441—Chapter 73.

82.7(3) Approval of level of care. Medicaid payment shall be made for ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Medicaid quality improvement organization (QIO) unit.

82.7(4) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—16.3(17A).

This rule is intended to implement Iowa Code section 249A.12.

[ARC 8207B, IAB 10/7/09, effective 12/1/09; ARC 8446B, IAB 1/13/10, effective 2/17/10; ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 4973C, IAB 3/11/20, effective 4/15/20; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.8(249A) Determination of need for continued stay. For clients not enrolled with a managed care organization, certification of need for continued stay shall be made according to procedures established by the Iowa Medicaid QIO unit. For all clients enrolled with a managed care organization, the managed care organization shall review the Medicaid client's need for continued care in an ICF/ID at least annually. The managed care organization must submit documentation to the Iowa Medicaid QIO unit for all reviews that indicate a change in the client's level of care. The Iowa Medicaid QIO unit shall make a final determination for any reviews that indicate a change in the level of care.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 8207B, IAB 10/7/09, effective 12/1/09; ARC 8446B, IAB 1/13/10, effective 2/17/10; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.9(249A) Arrangements with residents.

82.9(1) Resident care agreement. The ICF/ID Resident Care Agreement, Form 470-0374, shall be used as a three-party contract among the facility, the resident, and the department to spell out the duties, rights, and obligation of all parties.

82.9(2) Financial participation by resident. A resident's payment for care may include any voluntary payments made by family members toward cost of care of the resident. The resident's client participation and medical payments from a third party shall be paid toward the total cost of care for the month before any Medicaid payment is made. Medicaid will pay the balance of the cost of care for the remainder of the month. The facility shall make arrangements directly with the resident for payment of client participation.

82.9(3) Personal needs account. When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The department shall charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs account when the charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the department of inspections and appeals and shall meet the following criteria:

a. Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

b. When something is purchased for the resident and is not a direct cash disbursement, each expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

c. Personal funds shall only be turned over to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give consent, the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, itemized, dated receipt shall be required to be deposited in the resident's files.

d. The receipts for each resident shall be kept until canceled by auditors.

e. The ledger and receipts for each resident shall be made available for periodic audits by an accredited department of inspections and appeals representative. Audit certification shall be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

f. Upon a member's death, a receipt shall be obtained from the next of kin or the member's guardian before releasing the balance of the personal needs funds. When the member has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. The department shall turn the funds over to the member's estate.

82.9(4) *Safeguarding personal property.* The facility shall safeguard the resident's personal possessions. Safeguarding shall include, but is not limited to:

a. Providing a method of identification of the resident's suitcases, clothing, and other personal effects, and listing these on an appropriate form attached to the resident's record at the time of admission. These records shall be kept current. Any personal effects released to a relative of the resident shall be covered by a signed receipt.

b. Providing adequate storage facilities for the resident's personal effects.

c. Ensuring that the resident is accorded privacy and uncensored communication with others by mail and telephone and with persons of the resident's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the administrator and the reasons noted shall be made a part of the resident's record.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 8207B, IAB 10/7/09, effective 12/1/09; ARC 8446B, IAB 1/13/10, effective 2/17/10; ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—82.10(249A) Discharge and transfer.

82.10(1) *Notice.* When a Medicaid member requests transfer or discharge to a community setting, or another person requests this for the member, the administrator shall promptly notify a targeted case management provider. Names of local providers are available from the department's local office. This shall be done in sufficient time to permit a case manager to assist in the decision and planning for the transfer or discharge.

82.10(2) *Case activity report.* A Case Activity Report, Form 470-0042, shall be submitted to the department whenever a Medicaid applicant or member enters the facility, changes level of care, or is discharged from the facility.

82.10(3) *Plan.* The administrator and staff shall assist the resident in planning for transfer or discharge through development of a discharge plan.

82.10(4) *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

a. A transfer form of diagnosis.

b. Aid to daily living information.

c. Transfer orders.

d. Nursing care plan.

e. Physician's or qualified intellectual disability professional's orders for care.

f. The resident's personal records.

g. When applicable, the personal needs fund record.

82.10(5) *Income refund.* When a resident leaves the facility during the month, any unused portion of the resident's income shall be refunded.

This rule is intended to implement Iowa Code section 249A.12.
[ARC 8207B, IAB 10/7/09, effective 12/1/09; ARC 8446B, IAB 1/13/10, effective 2/17/10; ARC 0582C, IAB 2/6/13, effective 4/1/13]

441—82.11(249A) Continued stay review. Rescinded ARC 2361C, IAB 1/6/16, effective 1/1/16.

441—82.12(249A) Quality of care review. Rescinded ARC 2361C, IAB 1/6/16, effective 1/1/16.

441—82.13(249A) Records.

82.13(1) *Content.* The facility shall at a minimum maintain the following records:

a. All records required by the department of public health and the department of inspections and appeals.

b. Medical records as required by Section 1902(a)(31) of Title XIX of the Social Security Act.

c. Records of all treatments, drugs and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

d. Documentation in each resident's records which will enable the department to verify that each charge is due and proper prior to payment.

e. Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

f. All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

g. Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for residents in skilled, intermediate, and residential care.

(2) Census figures for each type of care shall be totaled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of 100 percent occupancy and a request for refunds covering indicated recipients of nursing care which have not been properly accounted for.

h. Resident accounts.

i. Inservice education program records.

j. Inspection reports pertaining to conformity with federal, state, and local laws.

k. Residents' personal records.

l. Residents' medical records.

m. Disaster preparedness reports.

82.13(2) *Retention.* Records shall be retained in the facility for a minimum of five years or until an audit is performed on those records, whichever is longer.

82.13(3) *Change of owner.* All records shall be retained within the facility upon change of ownership.

This rule is intended to implement Iowa Code section 249A.12.
[ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.14(249A) Payment procedures.

82.14(1) *Method of payment.* Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule 441—82.5(249A).

82.14(2) and 82.14(3) Reserved.

82.14(4) *Periods authorized for payment.*

a. Payment shall be made on a per diem basis for the portion of the month the resident is in the facility.

b. Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility for persons with an intellectual disability.

c. Payment will be approved for the day of admission but not the day of discharge or death.

d. Payment will be approved for periods the resident is absent to visit home for a maximum of 30 days annually. Additional days may be approved for special programs of evaluation, treatment or habilitation outside the facility. Documentation as to the appropriateness and therapeutic value of resident visits and outside programming, signed by a physician or qualified intellectual disability professional, shall be maintained at the facility.

e. Payment will be approved for a period not to exceed ten days in any calendar month when the resident is absent due to hospitalization. Medicaid payment to the facility may not be initiated while a resident is on reserve bed days unless the person was residing in the facility as a private pay resident prior to the hospitalization and returns to the facility as a resident.

f. Payment for periods when residents are absent for visitation or hospitalization from facilities with more than 15 beds will be made at 80 percent of the allowable audited costs for those beds. Facilities with 15 or fewer beds will be reimbursed at 95 percent of the allowable audited costs for those beds.

82.14(5) Supplementation. Only the amount of client participation may be billed to the resident for the cost of care. No supplementation of the state payment shall be made by any person.

EXCEPTION: The resident, the resident's family or friends may pay to hold the resident's bed in cases where a resident spends over 30 days on yearly visitation or spends over 10 days on a hospital stay. When the resident is not discharged from the facility, the payments shall not exceed 80 percent of the allowable audited costs for the facility, not to exceed the maximum reimbursement rate. When the resident is discharged, the facility may handle the holding of the reserved bed in the same manner as a private paying resident.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 0582C, IAB 2/6/13, effective 4/1/13; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.15(249A) Billing procedures.

82.15(1) Claims. Claims for service for clients not enrolled with a managed care organization must be sent to the Iowa Medicaid after the month of service and within 365 days of the date of service. Such claims must be submitted electronically through Iowa Medicaid's electronic clearinghouse.

a. A remittance advice of the claims paid may be obtained through the Iowa Medicaid portal access (IMPA) system.

b. Adjustments to claims may be made electronically as provided for by the Iowa Medicaid.

82.15(2) Reserved.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.16(249A) Closing of facility. When a facility is planning on closing, the department and the department's contracted managed care organizations with which the facility is enrolled shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving Medicaid shall be approved by the resident's managed care organization or by the Iowa Medicaid enterprise for residents not enrolled with a managed care organization.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—82.17(249A) Audits.

82.17(1) Audits of financial and statistical report. Authorized representatives of the department or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report, Form 470-0030, are reasonable and proper according to the rules set forth in 441—82.5(249A). These audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agents.

a. When a proper per diem rate cannot be determined, through generally accepted auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department that the indicated per diem should be reduced to 75 percent of the established payment rate for the ensuing fiscal period and if the situation is not remedied on the subsequent Financial and Statistical Report, Form 470-0030, the facility shall be suspended and eventually canceled from the intermediate care facility program, or

b. When a facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the ensuing fiscal period. The department may, after considering the seriousness of the exception, make the reduction.

82.17(2) *Auditing of proper billing and handling of patient funds.*

a. Iowa Medicaid, the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure that the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. Iowa Medicaid, the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

c. The auditor shall recommend and the department shall request repayment by the facility to either the department or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have 60 days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. When the facility fails to comply with paragraph "d" the requested refunds may be withheld from future payments to the facility. The withholding shall not be more than 25 percent of the average of the last six monthly payments to the facility. The withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to 75 percent of the current payment rate.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 6776C, IAB 12/28/22, effective 2/1/23]

441—82.18(249A) Out-of-state facilities. Payment will be made for care in out-of-state intermediate care facilities for persons with an intellectual disability. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

82.18(1) Out-of-state providers will be reimbursed at the same intermediate care facility rate they are receiving for their state of residence.

82.18(2) Out-of-state facilities shall not submit financial and statistical reports as required in rule 441—81.6(249A).

82.18(3) Payment for periods when residents are absent for visitation or hospitalization will be made to out-of-state facilities at 80 percent of the rate paid to the facility by the Iowa Medicaid program. Out-of-state facilities with 15 or fewer beds shall be reimbursed at 95 percent of the rate paid to the facility by the Iowa Medicaid program.

This rule is intended to implement Iowa Code section 249A.12.

[ARC 0582C, IAB 2/6/13, effective 4/1/13]

441—82.19(249A) State-funded personal needs supplement. A Medicaid member living in an intermediate care facility for persons with an intellectual disability who has countable income for purposes of rule 441—75.16(249A) of less than \$50 per month shall receive a state-funded payment from the department for the difference between that countable income and \$50 if the legislature has appropriated funding specifically for this purpose. This payment shall not be considered a benefit under Title XIX of the Social Security Act.

This rule is intended to implement Iowa Code section 249A.30A.
 [ARC 0582C, IAB 2/6/13, effective 4/1/13]

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◊ Two or more ARCs

CHAPTER 87
FAMILY PLANNING PROGRAM

PREAMBLE

This chapter defines and structures the family planning program administered by the department pursuant to Iowa Code section 217.41B. The purpose of this program is to provide family planning services to individuals who are not enrolled in medical assistance under 441—Chapter 74 or 441—Chapter 75. The department is not receiving federal financial participation for expenditures under the family planning program. Therefore, this chapter shall remain in effect only as long as state funding is available.

The family planning program shall replicate the eligibility requirements and other provisions included in the Medicaid family planning network waiver, as approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services in effect on June 30, 2017, but shall provide for distribution of the family planning services program funds in accordance with this chapter.

Distribution of family planning program funds under this chapter shall be made in a manner that continues access to family planning services.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.1(217) Definitions.

“Applicant” means a person who applies for assistance under the family planning program described in this chapter.

“Authorized Title X agency” means an agency or entity with an executed memorandum of understanding (MOU) with the Iowa department of human services authorizing the agency to perform point-of-service eligibility determinations for the family planning program.

“Citizen” or *“citizenship”* includes both citizens of the United States and nationals of the United States as defined in 8 U.S.C. Section 1101(a)(22).

“Department” means the Iowa department of human services.

“Family planning services” means pregnancy prevention and related reproductive health services.

“Federal poverty level” means the levels published and updated periodically in the Federal Register by the United States Department of Health and Human Services (DHHS) under the authority of 42 U.S.C. Section 9902(2) and revised annually on April 1.

“Member” means a person who has been determined eligible and is a current or former recipient of the family planning program services.

“Noncitizen” means the same as the term “alien” as defined at 8 U.S.C. Section 1101(a)(3).

“Qualified noncitizen” means the same as the term “qualified alien” as defined at 8 U.S.C. Section 1641(b) and (c) and refers to a person who is:

1. Lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);
2. Granted asylum in the United States under Section 208 of the INA;
3. A refugee admitted to the United States under Section 207 of the INA;
4. Paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;
5. A person whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA;
6. Granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;
7. An Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V);
8. A Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);
9. A battered noncitizen as described in 8 U.S.C. Section 1641(c);

10. Certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386;
11. An American Indian born in Canada to whom Section 289 of the INA applies or a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e);
12. Under the age of 21 and lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii); or
13. Lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of Public Law 116-260.

“*Qualifying quarters*” means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act worked by a parent of a noncitizen while the noncitizen was under the age of 18 and all of the qualifying quarters worked by a spouse of the noncitizen during their marriage if the noncitizen remains married to the spouse or the spouse is deceased. No qualifying quarters of coverage that are creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to a noncitizen if the parent or spouse of the noncitizen received any federal means-tested public benefit during the period for which the qualifying quarter is credited.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.2(217) Eligibility. Eligibility for the family planning program shall be determined according to the provisions of this rule.

87.2(1) Persons covered. Subject to funding as described in subrule 87.7(1) and to the requirements of subrules 87.2(2), 87.2(4), and 87.2(6), assistance for family planning services shall be available to the following individuals who are not enrolled in medical assistance pursuant to 441—Chapter 74 or 441—Chapter 75:

- a. Women who were enrolled in medical assistance when their pregnancy ended and who are capable of bearing children but are not pregnant. Eligibility for these women extends for 12 consecutive months after the month when their 60-day postpartum period ends;
- b. Women who are under the age of 55, who are capable of bearing children but are not pregnant, and who have household income that does not exceed 300 percent of the federal poverty level as determined pursuant to subrule 87.2(3);
- c. Men who are under the age of 55, who are capable of fathering children, and who have household income that does not exceed 300 percent of the federal poverty level as determined pursuant to subrule 87.2(3).

87.2(2) Furnishing of social security number. As a condition of eligibility, except as provided by paragraph 87.2(2)“a,” an applicant or member must provide to the department or authorized Title X agency, as applicable, all social security numbers issued to each individual (including children) for whom family planning services are sought.

- a. The requirement of furnishing a social security number does not apply to an individual who:
 - (1) Is not eligible to receive a social security number;
 - (2) Does not have a social security number and may only be issued a social security number for a valid nonwork reason in accordance with 20 CFR §422.104 as amended to March 15, 2022; or
 - (3) Refuses to obtain a social security number because of a well-established religious objection. For this purpose, a well-established religious objection means that the individual:
 1. Is a member of a recognized religious sect or division of a sect; and
 2. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.
- b. If a required social security number has not been issued or is not known, the individual seeking coverage under the family planning program must cooperate with the department or authorized Title X agency, as applicable, in applying for a social security number with the Social Security Administration or in requesting the Social Security Administration to furnish the number.

87.2(3) Determination of household income. The department shall determine the countable household income of an individual applying under paragraph 87.2(1) “b” or “c” as follows:

a. Household composition. The household shall include the applicant or member, any dependent children, as defined below, living in the same home as the applicant or member, and any spouse living in the same home as the applicant or member, except when a dependent child or spouse has elected to receive supplemental security income under Title XVI of the Social Security Act.

(1) Definition of dependent children. A dependent child is one under the age of 18 years or aged 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and who is reasonably expected to complete the program before reaching the age of 19.

(2) Reserved.

b. Earned income. All earned income that is received by a member of the household shall be counted except for earnings of a child who is a full-time student as defined in subparagraph 87.2(3) “a”(1). The following earned income, including but not limited to, shall be counted:

(1) Salary.

(2) Wages.

(3) Tips.

(4) Bonuses.

(5) Commissions.

(6) Income from Job Corps.

(7) Earnings from self-employment defined as gross income less the allowable costs of producing the income.

c. Unearned income. The following unearned income of all household members shall be counted:

(1) Unemployment insurance benefits.

(2) Child support.

(3) Alimony.

(4) Social security and railroad retirement benefits.

(5) Workers’ compensation and disability payments.

(6) Benefits paid by the U.S. Department of Veterans Affairs to disabled members of the armed forces or survivors of deceased veterans.

d. Deemed income. Income deeming for a sponsored alien shall be determined pursuant to subrule 87.2(5).

e. Deductions. Deductions from income shall be made for any payments made by household members for the following:

(1) Court-ordered child support, alimony, or spousal support paid to non-household members.

(2) Twenty percent of nonexempt earnings.

(3) Child care expenses or expenses related to care for an incapacitated adult. This deduction shall not exceed \$200 per month for each child under the age of two and \$175 per month for each adult or child aged two or older.

87.2(4) Citizenship or alienage requirements.

a. To be eligible for the family planning program, a person must be one of the following:

(1) A citizen or national of the United States.

(2) A qualified noncitizen continuously present (as described in Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) at 62 CFR §61415 dated November 11, 1997) in the United States since August 22, 1996.

(3) A qualified noncitizen under the age of 21.

(4) A refugee admitted to the United States under Section 207 of the Immigration and Nationality Act (INA).

(5) A noncitizen who has been granted asylum under Section 208 of the INA.

(6) A noncitizen whose deportation is withheld under Section 243(h) or 241(b)(3) of the INA.

(7) A qualified noncitizen veteran who has an honorable discharge that is not due to alienage.

(8) A qualified noncitizen who is on active duty in the armed forces of the United States other than active duty for training.

(9) A qualified noncitizen who is the spouse or unmarried dependent child of a qualified noncitizen described in subparagraph 87.2(4)“a”(7) or 87.2(4)“a”(8), including a surviving spouse who has not remarried.

(10) A qualified noncitizen who has resided in the United States for a period of at least five years beginning on the date of the qualified noncitizen’s entry into the United States with a status within the meaning of subparagraph 87.2(4)“a”(1), 87.2(4)“a”(4), or 87.2(4)“a”(9) under the definition of “qualified noncitizen” in rule 441—87.1(217).

(11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V).

(12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).

(13) A certified victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386.

(14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e).

(15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 or to Section 602(b)(8) of Public Law 111-8.

(16) An Afghan paroled into the United States treated as a refugee pursuant to Section 2502 of public law 117-43.

(17) A qualified noncitizen lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of Public Law 116-260.

(18) A conditional entrant pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980.

b. As a condition of eligibility, all applicants for or members of the family planning program shall attest to their citizenship or qualified noncitizen status by signing the application or review form.

c. Except as provided in paragraph 87.2(4)“*h*,” applicants or members for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4)“*b*” shall present satisfactory documentation of citizenship as described in paragraph 87.2(4)“*d*” or “*e*.” A reference to a form in paragraph 87.2(4)“*d*” or “*e*” includes any successor form. An applicant or member who attests to citizenship must also verify the applicant’s identity. An applicant or member shall have a reasonable period to obtain and provide required documentation of citizenship or nationality.

(1) For the purposes of this requirement, the “reasonable period” begins on the date a written request for documentation is issued to an applicant or member and continues for 90 days.

(2) Family planning services shall be approved for new applicants and continue for members not previously required to provide documentation of citizenship or nationality until the end of the reasonable period to obtain and provide required documentation of citizenship or nationality.

d. Any one of the following documents must be accepted as satisfactory documentation of citizenship and identity:

(1) A United States passport, including a U.S. passport card issued by the U.S. Department of State, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) A Certificate of Naturalization.

(3) A Certificate of United States Citizenship.

(4) A valid U.S. state-issued driver’s license, but only if the state issuing the license does either of the following prior to issuance of the license:

1. Requires proof of United States citizenship; or

2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

(5) Documentation issued by a federally recognized Indian tribe as described at 42 CFR §435.407 as amended to March 15, 2022, including but not limited to a tribal enrollment card, a Certificate of Degree of Indian Blood, a tribal census document, or a document on tribal letterhead issued under the signature of the appropriate tribal official. Acceptable documentation:

1. Identifies the federally recognized Indian tribe that issued the document;

2. Identifies the individual by name; and
3. Confirms the individual's membership, enrollment, or affiliation with the tribe.
- (6) Another document that provides proof of United States citizenship and provides a reliable means of documentation of personal identity, as the Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

e. Satisfactory documentation of citizenship and identity may also be demonstrated by the combination of any identity document described in paragraph 87.2(4) "f" and any one of the following:

(1) A U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam, the U.S. Virgin Islands, American Samoa, Swain's Island, or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986 (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows that the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in this paragraph, the individual may be a collectively naturalized citizen. The following establishes U.S. citizenship for collectively naturalized individuals:

1. Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that the applicant was residing in the U.S., a U.S. possession, or Puerto Rico on or after January 13, 1941.

2. CNMI (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

- Evidence of birth in the CNMI; evidence of TTPI citizenship and residence in the CNMI, the U.S., or a U.S. territory or possession on or after November 3, 1986 (CNMI local time); and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time);

- Evidence of TTPI citizenship, continuous residence in the CNMI since before November 3, 1981 (CNMI local time); voter registration before January 1, 1975; and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time);

- Evidence of continuous domicile in the CNMI since before January 1, 1974, and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

Note: If a person entered the CNMI as a nonimmigrant and lived in the CNMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S.

(3) A Report of Birth Abroad of a U.S. citizen.

(4) A certificate of birth in the U.S.

(5) A U.S. Citizen I.D. card.

(6) A Northern Marianas Identification Card issued by the U.S. Department of Homeland Security (or predecessor agency).

(7) A final adoption decree showing the child's name and U.S. place of birth or, if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. Civil Service employment before June 1, 1976.

(9) A U.S. military record showing a U.S. place of birth.

(10) Documentation that a child meets the requirements of Section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. Section 1431).

(11) Medical records, including but not limited to hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(12) A life, health, or other insurance record that indicates a U.S. place of birth.

(13) An official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(14) School records, including preschool, Head Start, and day care, showing the child's name and U.S. place of birth.

(15) Federal or state census records showing U.S. citizenship or a U.S. place of birth.

If the applicant does not have one of the documents listed in paragraph 87.2(4) "d" or subparagraphs 87.2(4) "e"(1) through (15), the applicant may submit an affidavit using Form 470-4373 or 470-4373(S),

signed under penalty of perjury by another individual who can reasonably attest to the applicant's citizenship. Such affidavit must contain the applicant's name, date of birth, and place of U.S. birth. The affidavit is not required to be notarized.

f. Any of the following documents must be accepted as satisfactory documentation of identity, provided the document has a photograph or other identifying information sufficient to establish identity, including but not limited to name, age, sex, race, height, weight, eye color, or address:

(1) Identity documents listed at 8 CFR §274a.2(b)(1)(v)(B)(1) as amended to March 15, 2022, except a driver's license issued by a Canadian government authority.

(2) A driver's license issued by a state or territory.

(3) A school identification card.

(4) A U.S. military card or draft record.

(5) An identification card issued by the federal, state, or local government.

(6) A military dependent's identification card.

(7) A U.S. Coast Guard Merchant Mariner card.

(8) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(9) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(10) A finding of identity from a federal agency or another state agency, including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

If the applicant does not have any document specified in subparagraphs 87.2(4) "*f*"(1) through (10), the applicant may submit an affidavit using Form 470-4386 or 470-4386(S), signed under penalty of perjury by another individual who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in paragraph 87.2(4) "*f*." The affidavit is not required to be notarized.

g. The department or authorized Title X agency, as applicable, must accept a photocopy, facsimile, scanned, or other copy of a document listed in paragraph 87.2(4) "*d*," "*e*," or "*f*" to the same extent as an original document, unless information on the submitted copy is inconsistent with other information available or there is reason to question the validity of, or information in, the document. The department must provide assistance in a timely manner to persons who need assistance in securing satisfactory documentation of citizenship or identity.

h. A person for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4) "*b*" is not required to present documentation of citizenship and identity for the family planning program if any of the following circumstances apply:

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare).

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal Social Security Act, Section 223 or 202, based on disability (as defined in Section 223(d) of the Act).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act.

(4) The person is or was exempted while assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act on the basis of being a child in foster care as defined in Iowa Code section 232.2(20B). This exemption does not apply, and the person is subject to the citizenship and identity documentation requirements described in paragraph 87.2(4) "*c*," when services under Part B of Title IV were terminated due to failure to meet citizenship requirements.

(5) The person is or was exempted while assisted by foster care as defined in Iowa Code section 232.2(20B) or adoption assistance funded under Part E of Title IV of the federal Social Security Act. This exemption does not apply, and the person is subject to the citizenship and identity documentation

requirements described in paragraph 87.2(4) “c,” when services under Part E of Title IV were terminated due to failure to meet citizenship requirements.

(6) The person has previously presented satisfactory documentation of citizenship and identity, as specified by the United States Secretary of Health and Human Services.

(7) The person was deemed eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) on or after July 1, 2006, as the newborn of a Medicaid-eligible mother.

(8) The person was eligible for medical assistance pursuant to 42 U.S.C. Section 1397ll(e) as the newborn of a mother eligible for assistance under a State Children’s Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

i. Except as provided in paragraph 87.2(4) “h,” applicants or members for whom an attestation of qualified noncitizen status has been made pursuant to paragraph 87.2(4) “b” shall present satisfactory documentation of qualified noncitizen status. Satisfactory documentation of qualified noncitizen status is documentation issued by the U.S. Citizenship and Immigration Services (USCIS) (formerly Immigration and Naturalization Service (INS)) of the Department of Homeland Security that identifies the person’s qualified noncitizen status.

87.2(5) Deeming of sponsor’s income.

a. When a qualified noncitizen admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the qualified noncitizen, the income of the sponsor shall be deemed to determine eligibility for the sponsored qualified noncitizen. The amount deemed to the sponsored qualified noncitizen shall be the total countable income of the sponsor determined pursuant to paragraphs 87.2(3) “b” through “d.”

b. An indigent qualified noncitizen is exempt from the deeming of a sponsor’s income for 12 months after indigence is determined. A qualified noncitizen shall be considered indigent if:

(1) The qualified noncitizen does not live with the sponsor; and

(2) The qualified noncitizen’s gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored qualified noncitizen’s household size.

c. A battered qualified noncitizen as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor’s income for 12 months.

d. Deeming of the sponsor’s income does not apply when:

(1) The sponsored qualified noncitizen attains citizenship through naturalization pursuant to Chapter 2 of Title II of the INA.

(2) The sponsored qualified noncitizen has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 creditable qualifying quarters as defined in rule 441—87.1(217).

(3) The sponsored qualified noncitizen or the sponsor dies.

(4) The sponsored qualified noncitizen is a child under the age of 21 as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

87.2(6) Residency requirements. Residency in Iowa is a condition of eligibility for the family planning program.

a. Definition of resident. A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person’s home there and not for a temporary purpose. A person is a resident of Iowa when living there on other than a temporary basis. Residence shall not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed.

b. Retention of residence. Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished does not interrupt continuity of residence.

87.2(7) Investigation by quality control or the department of inspections and appeals. As a condition of eligibility, an applicant or member shall cooperate with the department when the applicant's or member's case is selected by quality control or the department of inspections and appeals for verification of eligibility unless the investigation revolves solely around the circumstances of a person whose income does not affect family planning program eligibility. (More information can be found in department of inspections and appeals rules in 481—Chapter 72.) Failure to cooperate shall serve as a basis for denial of an application or cancellation of family planning program eligibility. Once a person's eligibility is denied or canceled for failure to cooperate, the person may reapply but shall not be determined eligible until cooperation occurs.

87.2(8) Funding contingency. Initial and continuing eligibility for family planning services under this program is subject to the availability of funding appropriated for this purpose.

a. When appropriated funding is exhausted, ongoing eligibility shall be terminated and new applications shall be denied.

b. When appropriated funding becomes available, applications submitted thereafter will be considered on a first-come, first-served basis, based on the date of approval.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.3(217) Enrollment.

87.3(1) Application. An individual who requests assistance for family planning services shall file an application Form 470-5485. A woman eligible under paragraph 87.2(1) "a" is not required to file an application for assistance under this program. The department will automatically redetermine eligibility upon loss of other Medicaid eligibility within 12 months after the month when the 60-day postpartum period ends.

87.3(2) Place of filing. An application may be filed at any department office or authorized Title X family planning agency.

87.3(3) Information or verification needed to determine eligibility. The department or authorized Title X agency, as applicable, shall notify the applicant or member, authorized representative, or responsible person in writing of the information or verification required to establish eligibility. This notice shall be provided to the applicant or member, authorized representative, or responsible person personally or by mail or fax.

a. The department or authorized Title X agency, as applicable, shall allow the applicant or member, authorized representative, or responsible person ten calendar days to supply the information or verification requested.

b. The department or authorized Title X agency, as applicable, may extend the deadline for a reasonable period of time when the applicant or member, authorized representative, or responsible person is making reasonable efforts but is unable to secure the required information or verification.

c. If benefits are denied for failure to provide information or verification and the information or verification is provided within 14 calendar days of the effective date of the denial, the department or authorized Title X agency, as applicable, shall complete the eligibility determination as though the information or verification were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or member, authorized representative, or responsible person shall have until the next business day to provide the information.

87.3(4) Annual review. An individual who requests that assistance continue for family planning services shall complete Form 470-4071. The member must submit the completed review form before the end of the eligibility period to any location specified in subrule 87.3(2).

87.3(5) Time limit for decision. An application or review form shall be processed by the department or authorized Title X agency with which the form was filed. A determination of eligibility shall be made within 45 days of receipt of the application or review form.

87.3(6) Notice of decision. The individual shall be notified in writing of the decision regarding eligibility for the family planning program.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.4(217) Effective date of eligibility. Subject to the availability of funding appropriated for this purpose, assistance for family planning services under this program shall be effective on the first day of the month of application or the first day of the month in which all eligibility requirements are met, whichever is later. Assistance shall not be available under this program for any months prior to the month of application.
[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17]

441—87.5(217) Period of eligibility. Eligibility for family planning services under this program shall be limited to a period of 12 months from the effective date of eligibility, or the duration of appropriated funding, whichever is less. A new application or annual redetermination of eligibility shall be required for benefits to continue beyond 12 months.
[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17]

441—87.6(217) Reporting changes.

87.6(1) Required changes to report. An individual applying for or receiving family planning services under this program shall report the following changes within ten days from the date the change is known:

- a. Change in mailing address;
- b. No longer a resident of Iowa;
- c. A woman becomes pregnant;
- d. No longer capable of bearing or fathering children;
- e. Becomes Medicaid or Iowa health and wellness plan eligible, except women meeting criteria in paragraph 87.2(1)“a”; or
- f. Turns 55 years of age.

87.6(2) Disregard of changes. An individual found to be eligible upon application or annual redetermination of eligibility shall remain eligible for 12 months or the duration of appropriated funding, whichever is less, regardless of any change in income or household size.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.7(217) Funding of family planning services program.

87.7(1) Distribution of funds. Distribution of family planning services program funds shall be made to eligible, approved, and participating family planning providers subject to rule 441—87.11(217). Eligible family planning providers shall not include any provider that performs abortions or that maintains or operates a facility where abortions are performed and must attest to this fact. Effective July 1, 2018, eligible family planning providers shall be interpreted to include a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed. For the purposes of this subrule, “nonprofit health care delivery system” means an Iowa nonprofit corporation that controls, directly or indirectly, a regional health care network consisting of hospital facilities and various ambulatory and clinic locations that provide a range of primary, secondary, and tertiary inpatient, outpatient, and physician services. For the purposes of this subrule, “abortion” does not include any of the following:

- a. The treatment of a woman for a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death.
- b. The treatment of a woman for a spontaneous abortion, commonly known as a miscarriage, when not all of the products of human conception are expelled.

87.7(2) Recovery. The department shall recover from a member all funds incorrectly expended to or on behalf of the member for family planning program services.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 4069C, IAB 10/10/18, effective 11/14/18]

441—87.8(217) Availability of services. Family planning services are payable for an individual enrolled in this program only when care is received at or authorized by a participating family planning provider.

87.8(1) Sterilization is a covered service subject to the limitations in 441—Chapter 78.

87.8(2) Covered services shall not include abortion services.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.9(217) Payment of covered services. Payment for family planning services covered under this chapter, including services authorized but not provided by a participating family planning provider, shall be made only to participating family planning providers on a fee schedule determined by the department. Family planning services program funds distributed in accordance with this rule shall not be used for direct or indirect costs, including but not limited to administrative costs or expenses, overhead, employee salaries, rent, and telephone and other utility costs, related to providing abortions as specified in subrule 87.7(1).

87.9(1) Fee schedule. The fee schedule shall include the amount of payment for each service and any limits on the service (e.g., a routine Pap smear is payable once annually).

87.9(2) Third-party payments. This program is the payer of last resort for services covered in this chapter. Any third-party payment received by the family planning agency or other provider of services plus any payments under this program cannot exceed the fee schedule allowance.

87.9(3) Supplementation. Payment made under this program shall be considered payment in full.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17]

441—87.10(217) Submission of claims.

87.10(1) Family planning providers that participate in the program shall submit claims to Iowa Medicaid for services rendered no later than 45 days from the last day of the month in which services were provided.

87.10(2) Following a successful review of the claim, the Iowa Medicaid enterprise shall make payments to the family planning provider subject to the availability of funding and the allocation of available funds under subrule 87.7(1).

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 6853C, IAB 2/8/23, effective 4/1/23]

441—87.11(217) Providers eligible to participate.

87.11(1) Providers must be enrolled with the Iowa Medicaid program, subject to 441—Chapter 79, and otherwise qualified to provide family planning services under Medicaid, subject to the limitations related to abortions, as specified above under subrule 87.7(1). Effective July 1, 2018, as a condition of eligibility as a provider under the family planning services program, each distinct location of a nonprofit health care delivery system shall enroll in the program as a separate provider, be assigned a distinct provider identification number, and complete an attestation that abortions are not performed at the distinct location. For the purposes of this subrule, “nonprofit health care delivery system” shall have the same meaning as provided under subrule 87.7(1).

87.11(2) Process for enrollment. Providers wishing to enroll under the state family planning program must complete the following steps:

a. Must complete enrollment with Iowa Medicaid.

b. Must complete Form 470-5484 regarding nonprovision of abortions, pursuant to requirements referenced above under subrule 87.7(1).

c. Forms referenced in this subrule must be sent to Iowa Medicaid, Provider Enrollment Unit, P.O. Box 36450, Des Moines, Iowa 50315.

[ARC 3199C, IAB 7/19/17, effective 7/1/17; ARC 3389C, IAB 10/11/17, effective 11/15/17; ARC 4069C, IAB 10/10/18, effective 11/14/18; ARC 6853C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code section 217.41B.

[Filed Emergency ARC 3199C, IAB 7/19/17, effective 7/1/17]

[Filed ARC 3389C (Notice ARC 3198C, IAB 7/19/17), IAB 10/11/17, effective 11/15/17]

[Filed ARC 4069C (Notice ARC 3910C, IAB 8/1/18), IAB 10/10/18, effective 11/14/18]

[Filed ARC 6853C (Notice ARC 6642C, IAB 11/16/22), IAB 2/8/23, effective 4/1/23]

CHAPTER 90
CASE MANAGEMENT SERVICES

Case management services are designed to ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social, educational, housing, transportation, vocational, and other services. The term “case management” encompasses all categories of case management: targeted case management, case management and administrative case management provided to members enrolled in a 1915(c) waiver, community-based case management provided through managed care, and integrated health home (IHH) care coordination provided to the habilitation and children’s mental health waiver populations. If a part of these rules does not apply to all categories of case management, then the rule will clarify the affected category(ies).

[ARC 4897C, IAB 2/12/20, effective 3/18/20]

441—90.1(249A) Definitions.

“*Adult*” means a person 18 years of age or older on the first day of the month in which service begins.

“*Applicant*” means a person who has applied for an HCBS waiver or habilitation program.

“*Care coordination*” means the case management services provided by an integrated health home to members who are also receiving home- and community-based habilitation services pursuant to 441—Chapter 78 or HCBS children’s mental health waiver services pursuant to 441—Chapter 83.

“*Case management*” means the categories of case management: targeted case management, case management provided to members enrolled in a 1915(c) waiver, community-based case management provided through managed care, and integrated health home (IHH) care coordination provided to the habilitation and children’s mental health waiver populations.

“*Case manager*” means the staff person providing all categories of case management services regardless of the entity providing the service or the program in which the member is enrolled, including IHH care coordination.

“*Child*” means a person other than an adult.

“*Chronic mental illness*” means a condition present in adults who have a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. The definition of chronic mental illness and qualifying criteria are found in 441—Chapter 24. For purposes of this chapter, people with mental disorders resulting from Alzheimer’s disease or substance abuse shall not be considered chronically mentally ill.

“*Community-based case manager*” means the employee of a Medicaid-contracted managed care organization (MCO) who provides case management services to MCO-enrolled members.

“*Core standardized assessment*” or “*CSA*” means an assessment instrument for determining the suitability of non-institutionally based long-term services and supports for an individual. The instrument shall be used in a uniform manner throughout the state to determine an applicant’s or member’s needs for training, support services, medical care, transportation, and other services and to develop an individual service plan to address such needs. The core standardized assessment shall be performed by a contractor under the direction of the department for the fee-for-service population. MCOs shall perform core standardized assessments for MCO-enrolled members or shall delegate the responsibility for completion of assessments. 441—Chapter 83 designates the assessment and reassessment tools to be used for each HCBS waiver. 441—Chapter 78 designates the assessment and reassessment tools to be used for habilitation.

“*Department*” means the department of human services.

“*Developmental disability*” means a severe, chronic disability that is determined through professionally administered screening and evaluations and that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the age of 22;
3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: (a) self-care, (b) receptive and expressive language, (c) learning, (d) mobility, (e) self-direction, (f) capacity for independent living, and (g) economic self-sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

"Fee-for-service member" or *"FFS member"* means a member who is not enrolled with a managed care organization because the member is exempt from managed care organization enrollment.

"Home- and community-based services" or *"HCBS"* means services provided pursuant to Sections 1915(c) and 1915(i) of the Social Security Act.

"Integrated health home" or *"IHH"* means a provider of health home services that is a Medicaid-enrolled provider and that is determined through the provider enrollment process to have the qualifications, systems and infrastructure in place to provide IHH services pursuant to 441—Chapter 77. IHH covered services and member eligibility for IHH enrollment are also governed by 441—Chapter 78 and the health home state plan amendment. The IHH provides care coordination services for enrolled habilitation and children's mental health waiver members.

"Intellectual disability" means a diagnosis of intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder). Diagnosis criteria are outlined in 441—Chapter 83.

"Major incident" means an occurrence that involves a member who is enrolled in an HCBS waiver, targeted case management, or habilitation services and that:

1. Results in a physical injury to or by the member that requires a physician's treatment or admission to a hospital;
2. Results in the death of any person;
3. Requires emergency mental health treatment for the member;
4. Requires the intervention of law enforcement;
5. Requires a report of child abuse pursuant to Iowa Code section 232.69, a report of dependent adult abuse pursuant to Iowa Code section 235B.3, or a report of elder abuse pursuant to Iowa Code chapter 235F; or
6. Constitutes a prescription medication error or a pattern of medication errors that leads to the outcome in numbered paragraph "1," "2," or "3"; or
7. Involves a member's location being unknown by provider staff who are responsible for protective oversight.

"Managed care organization" or *"MCO"* means the same as defined in 441—Chapter 73.

"Medical institution" means an institution that is organized, staffed, and authorized to provide medical care as set forth in the most recent amendment to 42 Code of Federal Regulations Section 435.1009 as amended to October 20, 2022. A residential care facility is not a medical institution.

"Member" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"Minor incident" means an occurrence that involves a member who is enrolled in an HCBS waiver, targeted case management, or habilitation services and that is not a major incident but that:

1. Results in the application of basic first aid;
2. Results in bruising;
3. Results in seizure activity;
4. Results in injury to self, to others, or to property; or
5. Constitutes a prescription medication error.

"Person-centered service plan" or *"service plan"* means a service plan created through the person-centered planning process, directed by the member with long-term care needs or the member's guardian or representative, to identify the member's strengths, capabilities, preferences, needs, and desired outcomes.

“*Rights restriction*” means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and people with whom a member may share a residence.

“*Targeted case management*” means case management services furnished to assist members who are part of a targeted population.

“*Targeted population*” means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of intellectual disability, chronic mental illness, or developmental disability; or
2. A child who is eligible to receive HCBS intellectual disability waiver services or HCBS children’s mental health waiver services according to 441—Chapter 83.

A member enrolled with a managed care organization or integrated health home is not part of the targeted population.

[ARC 4897C, IAB 2/12/20, effective 3/18/20; ARC 6854C, IAB 2/8/23, effective 4/1/23]

441—90.2(249A) Targeted case management. Rule 441—90.2(249A) applies only to the case management category of targeted case management and the defined targeted population.

90.2(1) Eligibility for targeted case management. A person who meets all of the following criteria shall be eligible for targeted case management:

- a. The person is eligible for Medicaid or is conditionally eligible under 441—Chapter 75;
- b. The person is a member of a targeted population;
- c. The person resides in a community setting or qualifies for transitional case management as set forth in subrule 90.2(4);
- d. The person has applied for targeted case management in accordance with the policies of the provider;
- e. The person’s need for targeted case management has been determined in accordance with rule 441—90.2(249A); and
- f. The person is not eligible for, or enrolled in, Medicaid managed care.

90.2(2) Determination of need for targeted case management. Assessment at least every 365 days of the need for targeted case management is required as a condition of eligibility under the medical assistance program. The targeted case management provider shall determine the member’s initial and ongoing need for service based on diagnostic reports, documentation of provision of services, and information supplied by the member and other appropriate sources. The evidence shall be documented in the member’s file and shall demonstrate that all of the following criteria are met:

- a. The member has a need for targeted case management to manage necessary medical, social, educational, housing, transportation, vocational, and other services for the benefit of the member;
- b. The member has functional limitations and lacks the ability to independently access and sustain involvement in necessary services; and
- c. The member is not receiving, under the medical assistance program or under a Medicaid managed health care plan, other paid benefits that serve the same purpose as targeted case management or integrated health home care coordination.

90.2(3) Application for targeted case management. The provider shall process an application for targeted case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department’s service unit or mental health and disability services regions if other services outside the scope of case management are needed or requested.

- a. *Application process and documentation.* The application shall include the member’s name, the nature of the request for services, and a summary of any evaluation activities completed. For FFS members, the provider shall inform the applicant in writing of the applicant’s right to choose the provider of case management services and, at the applicant’s request, shall provide a list of other case management services agencies from which the applicant may choose. The provider shall maintain this documentation for at least five years.

b. Application decision for targeted case management. The case manager shall inform the applicant, or the applicant's guardian or representative, of any decision to approve, deny, or delay the service in accordance with the notification requirements at 441—Chapter 16.

c. Denial of applications. The case manager shall deny an application for service when:

- (1) The applicant is not currently eligible for Medicaid;
- (2) The applicant does not meet the eligibility criteria in 441—subrule 90.2(1);
- (3) The applicant, or the applicant's guardian or representative, withdraws the application;
- (4) The applicant does not provide information required to process the application;
- (5) The applicant is receiving duplicative targeted case management or integrated health home care coordination from another Medicaid provider; or
- (6) The applicant does not have a need for targeted case management.

90.2(4) Transition to a community setting. Managed care organizations must provide transition services to all enrolled members. Fee-for-service targeted case management services may be provided to a member transitioning to a community setting during the 60 days before the member's discharge from a medical institution when the following requirements are met:

a. The member is an adult who qualifies for targeted case management and is a member of a targeted population. Transitional case management is not an allowable service for other HCBS programs or populations;

b. Case management services shall be coordinated with institutional discharge planning, but shall not duplicate institutional discharge planning;

c. The amount, duration, and scope of case management services shall be documented in the member's service plan, which must include case management services before and after discharge, to facilitate a successful transition to community living;

d. Payment shall be made only for services provided by Medicaid-enrolled targeted case management providers; and

e. Claims for reimbursement for case management services shall not be submitted until the member's discharge from the medical institution and enrollment in community services.

[ARC 4897C, IAB 2/12/20, effective 3/18/20; ARC 4973C, IAB 3/11/20, effective 4/15/20; ARC 6854C, IAB 2/8/23, effective 4/1/23]

441—90.3(249A) Termination of targeted case management services. Rule 441—90.3(249A) applies only to the case management category of targeted case management and the defined targeted population.

90.3(1) Targeted case management shall be terminated when:

- a.* The member does not meet eligibility criteria under rule 441—90.2(249A);
- b.* The member has achieved all goals and objectives of the service;
- c.* The member has no ongoing need for targeted case management;
- d.* The member is receiving targeted case management based on eligibility under an HCBS program but is no longer eligible for the program;
- e.* The member or the member's guardian or representative requests termination;
- f.* The member is unwilling or unable to accept further services; or
- g.* The member or the member's guardian or representative fails to provide access to information necessary for the development of the service plan or for implementation of targeted case management.

90.3(2) The provider shall notify the member or the member's guardian or representative in writing of the termination of targeted case management, in accordance with 441—Chapter 16.

[ARC 4897C, IAB 2/12/20, effective 3/18/20; ARC 4973C, IAB 3/11/20, effective 4/15/20; ARC 6854C, IAB 2/8/23, effective 4/1/23]

441—90.4(249A) Case management services. Rule 441—90.4(249A) applies to all categories of case management and all populations covered by case management.

90.4(1) Covered services. The following shall be included in case management services provided to members, whether FFS members or MCO-enrolled members:

a. Assessment. Initial assessments and regular reassessments must be done for each applicant and member to determine the need for any medical, social, educational, housing, transportation, vocational, or other services. The assessments and reassessments shall address all of the applicant's and member's areas of need, strengths, preferences, and risk factors, considering the person's physical

and social environment. Applicants and members will receive individualized prior notification of the assessment tool to be used and of who will conduct the assessment. The assessment and reassessment will be done using the core standardized assessment or another tool as designated in 441—Chapter 83 for each waiver population and 441—Chapter 78 for the habilitation population. Initial assessments must be face to face. Reassessments using the interRAI must be done face to face. Only the Supports Intensity Scale® assessment can be done telephonically, and then only when the situation meets the criteria outlined by the American Association on Intellectual and Developmental Disabilities (AAIDD). The off-year assessment (OYA) for the intellectual disability waiver can be done telephonically. A reassessment must be conducted at a minimum every 365 days and more frequently if material changes occur in the member's condition or circumstances. Case managers may participate during the assessment or reassessment process at the request of the applicant or member; the case manager does not assume the role of the assessor.

b. Person-centered service plan. At least every 365 days, the case manager shall develop and revise a comprehensive, person-centered service plan in collaboration with the member, the member's service providers, and other people identified as necessary by the member, as practicable. The person-centered service plan will be developed based on the assessment and shall include a crisis intervention plan based on the risk factors identified in a risk assessment. The case manager shall document the member's history, including current and past information and social history, and shall update the history annually. The case manager shall gather information from other sources such as family members, medical providers, social workers, guardians, representatives, and others as necessary to form a thorough social history and comprehensive person-centered service plan with the member. The person-centered service plan may also be referred to as a person-centered treatment plan.

(1) The person-centered service plan shall address all service plan components outlined in this chapter and in 441—Chapter 83 for the waiver in which the member is enrolled or 441—Chapter 78 for members enrolled in habilitation.

(2) Person-centered planning shall be implemented in a manner that supports the member, makes the member central to the process, and recognizes the member as the expert on goals and needs. In order for this to occur, there are certain process elements that must be included in the process. These include:

1. The member, guardian or representative must have control over who is included in the planning process, as well as have the authority to request meetings and revise the person-centered service plan (and any related budget) whenever reasonably necessary.

2. The process is timely and occurs at times and locations of convenience to the member, the member's guardian or representative and family members, and others, as practicable.

3. Necessary information and support are provided to ensure that the member or the member's guardian or representative is central to the process and understands the information. This includes the provision of auxiliary aids and services when needed for effective communication.

4. A strengths-based approach to identifying the positive attributes of the member shall be used, including an assessment of the member's strengths and needs. The member should be able to choose the specific planning format or tool used for the planning process.

5. The member's personal preferences shall be considered to develop goals and to meet the member's HCBS needs.

6. The member's cultural preferences must be acknowledged in the planning process, and policies/practices should be consistent with the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (the National CLAS Standards) of the Office of Minority Health, U.S. Department of Health and Human Services.

7. The planning process must provide meaningful access to members and their guardians or representatives with limited English proficiency (LEP), including low literacy materials and interpreters.

8. Members who are under guardianship or other legal assignment of individual rights, or who are being considered as candidates for these arrangements, must have the opportunity in the planning process to address any concerns.

9. There shall be mechanisms for solving conflict or disagreement within the process, including clear conflict of interest guidelines.

10. Members shall be offered information on the full range of HCBS available to support achievement of personally identified goals.

11. The member or the member's guardian or representative shall be central in determining what available HCBS are appropriate and will be used.

12. The member shall be able to choose between providers or provider entities, including the option of self-directed services when available.

13. The person-centered service plan shall be reviewed at least every 365 days or sooner if the member's functional needs change, circumstances change, or quality of life goals change, or at the member's request. There shall be a clear process for members to request reviews. The case management entity must respond to such requests in a timely manner that does not jeopardize the member's health or safety.

14. The planning process should not be constrained by any case manager's or guardian's or representative's preconceived limits on the member's ability to make choices.

15. Employment and housing in integrated settings shall be explored, and planning should be consistent with the member's goals and preferences, including where the member resides and with whom the member lives.

(3) Elements of the person-centered service plan. The person-centered service plan shall identify the services and supports that are necessary to meet the member's identified needs, preferences, and quality of life goals. The person-centered service plan shall:

1. Reflect that the setting where the member resides is chosen by the member. The chosen setting must be integrated in, and support full access to, the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving HCBS.

2. Be prepared in person-first singular language and be understandable by the member or the member's guardian or representative.

3. Note the strengths-based positive attributes of the member at the beginning of the plan.

4. Identify risks, while considering the member's right to assume some degree of personal risk, and include measures available to reduce risks or identify alternate ways to achieve personal goals.

5. Document goals in the words of the member or the member's guardian or representative, with clarity regarding the amount, duration, and scope of HCBS services that will be provided to assist the member. Goals shall consider the quality of life concepts important to the member.

6. Describe the services and supports that will be necessary and specify what HCBS services are to be provided through various resources, including natural supports, to meet the goals in the person-centered service plan.

7. Document the specific person or persons, provider agency and other entities providing services and supports.

8. Ensure the health and safety of the member by addressing the member's assessed needs and identified risks.

9. Document non-paid supports and items needed to achieve the goals.

10. Include the signatures of everyone with responsibility for the plan's implementation, including the member or the member's guardians or representatives, the case manager, the support broker/agent (when applicable), and providers, and include a timeline for review of the plan. The plan must be discussed with family, friends, and caregivers designated by the member so that they fully understand it and their roles.

11. Identify each person and entity responsible for monitoring the plan's implementation.

12. Identify needed services based upon the assessed needs of the member and prevent unnecessary or inappropriate services and supports not identified in the assessed needs of the member.

13. Document an emergency back-up plan that encompasses a range of circumstances (e.g., weather, housing, and staff).

14. Address elements of self-direction through the consumer choices option (e.g., financial management service, support broker/agent, alternative services) whenever the consumer choices option is chosen.

15. Be distributed directly to all parties involved in the planning process.

c. Referral and related activities. The case manager shall assist, as needed, the member in obtaining needed services, such as by scheduling appointments for the member and by connecting the member with medical, social, educational, housing, transportation, vocational or other service providers or programs that are capable of providing needed services to address identified needs and risk factors and to achieve goals specified in the person-centered service plan.

d. Monitoring and follow-up. The case manager shall perform monitoring activities and make contacts that are necessary to ensure the health, safety, and welfare of the member and to ensure that the person-centered service plan is effectively implemented and adequately addresses the needs of the member. At a minimum, monitoring shall include assessing the member, the places of service (including the member's home, when applicable), and all services regardless of the service funding stream. Monitoring shall also include review of service provider documentation. Monitoring of the following aspects of the person-centered service plan shall lead to revisions of the plan if deficiencies are noted:

(1) Services are being furnished in accordance with the member's person-centered service plan, including the amount of service provided and the member's attendance and participation in the service;

(2) The member has declined services in the service plan;

(3) Communication among providers is occurring, as practicable, to ensure coordination of services;

(4) Services in the person-centered service plan are adequate, including the member's progress toward achieving the goals and actions determined in the person-centered service plan; and

(5) There are changes in the needs or circumstances of the member. Follow-up activities shall include making necessary adjustments in the person-centered service plan and service arrangements with providers.

e. Contacts. Case managers shall make contacts with the member, the member's guardians or representatives, or service providers as frequently as necessary and no less frequently than necessary to meet the following requirements:

(1) The case manager shall have at least one face-to-face contact with the member in the member's residence at least quarterly;

(2) The case manager shall have at least one contact per month with the member or the member's guardians or representatives. This contact may be face to face or by telephone;

(3) Community-based case management contacts will be made in accordance with the Medicaid contract MED-16-019, or subsequent Medicaid managed care contracts with the department, in those instances where the contract specifies contacts different from this rule.

90.4(2) Exclusions. Payment shall not be made for activities otherwise within the definition of case management services when any of the following conditions exist:

a. The activities are an integral component of another covered Medicaid service.

b. The activities constitute the direct delivery of underlying medical, social, educational, housing, transportation, vocational or other services to which a member has been referred. Such services include, but are not limited to:

(1) Services under parole and probation programs;

(2) Public guardianship programs;

(3) Special education programs;

(4) Child welfare and child protective services; or

(5) Foster care programs.

c. The activities are components of the administration of foster care programs, including but not limited to the following:

(1) Research gathering and completion of documentation required by the foster care program;

(2) Assessing adoption placements;

(3) Recruiting or interviewing potential foster care parents;

- (4) Serving legal papers;
- (5) Conducting home investigations;
- (6) Providing transportation related to the administration of foster care;
- (7) Administering foster care subsidies; or
- (8) Making placement arrangements.

d. The activities for which a member may be eligible are a component of the administration of another nonmedical program, such as a guardianship, child welfare or child protective services, parole, probation, or special education program, except for case management that is included in an individualized education program or individualized family service plan consistent with Section 1903(c) of the Social Security Act.

e. The activities duplicate institutional discharge planning.
[ARC 4897C, IAB 2/12/20, effective 3/18/20]

441—90.5(249A) Rights restrictions. Rule 441—90.5(249A) applies to all categories of case management and all populations covered by case management. Any effort to restrict the rights of a member to realize the member's preferences or goals must be justified by a specific individualized assessed safety need and documented in the person-centered service plan. The following requirements must be documented in the plan when a safety need has been identified that warrants a rights restriction:

1. The specific and individualized assessed safety need;
2. The positive interventions and supports used prior to any modifications or additions to the person-centered service plan regarding safety needs;
3. The less intrusive methods of meeting the safety needs that have been tried but were not successful;
4. A clear description of the rights restriction that is directly proportionate to the specific assessed safety need;
5. The regular collection and review of data to measure the ongoing effectiveness of the rights restriction;
6. The established time limits for periodic reviews to determine whether the rights restriction is still necessary or can be terminated;
7. The informed consent of the member to the proposed rights restriction; and
8. An assurance that the rights restriction itself will not cause undue harm to the member.

[ARC 4897C, IAB 2/12/20, effective 3/18/20]

441—90.6(249A) Documentation and billing.

90.6(1) Documentation of contacts. Subrule 90.6(1) applies to all categories of case management and all populations covered by case management.

- a.* Documentation of case management services contacts shall include:
- (1) The name of the individual case manager;
 - (2) The need for, and occurrences of, coordination with other case managers within the same agency or referral or transition to another case management agency; and
 - (3) Other requirements as outlined in 441—Chapter 79 to support payment of services.
- b.* Targeted case management providers serving FFS members must also adhere to 441—Chapter 24.

90.6(2) Rounding units of service for case management services. Subrule 90.6(2) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. For all fee-for-service case management units of service, the following rounding process shall be used:

- a.* Add together the minutes spent on all billable activities during a calendar day for a daily total;
- b.* For each day, divide the total minutes spent on billable activities by 15 to determine the number of full 15-minute units for that day;
- c.* Round the remainder using these guidelines: Round 1 to 7 minutes down to zero units; round 8 to 14 minutes up to one unit; and

d. Add together the number of full units and the number of rounded units to determine the total number of units to bill for that day.

90.6(3) Collateral contacts. Subrule 90.6(3) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. For all fee-for-service case management units of service, the case manager may bill for documented contacts with other entities and individuals if the contacts are directly related to the member's needs and care, such as helping the member access services, identifying needs and supports to assist the member in obtaining services, providing other case managers with useful feedback, and alerting other case managers to changes in the member's needs.

90.6(4) Billable activities for case management services. Subrule 90.6(4) applies only to targeted case management provided to FFS members or case management provided to brain injury or elderly waiver FFS members. Billable activities for case management services are limited to the following activities, and any activity included in this list must be billed if the activity has occurred.

- a. Face-to-face meeting with the member:
 - (1) Contact time; and
 - (2) Documentation completed during meeting.
- b. Telephone conversation with the member:
 - (1) Contact time; and
 - (2) Documentation completed during meeting.
- c. Collateral contacts on behalf of the member, including face-to-face, telephone, and email contacts:

- (1) Contact time; and
- (2) Documentation completed during meeting.
- d. Individual care plans and person-centered service plans:
 - (1) Creation; and
 - (2) Revision.
- e. Social histories:
 - (1) Creation; and
 - (2) Revision.
- f. Assessments and reassessments:
 - (1) Participation during the assessment if requested by the member; and
 - (2) Utilization of the assessment for creation of the person-centered service plan.

[ARC 4897C, IAB 2/12/20, effective 3/18/20; ARC 6854C, IAB 2/8/23, effective 4/1/23]

441—90.7(249A) Case management services provider requirements. Rule 441—90.7(249A) applies to all categories of case management and all populations covered by case management.

90.7(1) Reporting procedures for major incidents.

- a. When a major incident occurs or a staff member becomes aware of a major incident:
 - (1) The staff member shall notify the following persons of the incident by midnight of the next calendar day after the incident:
 - 1. The staff member's supervisor;
 - 2. The member or member's legal guardians; and
 - 3. The member's case manager. The case manager shall create an incident report if a provider has not submitted a report.

(2) By midnight of the next business day after the incident, the staff member who observed or first became aware of the incident shall also report as much information as is known by the staff member about the incident to the member's managed care organization in the format required by the managed care organization. If the member is not enrolled with a managed care organization, or is receiving money follows the person funding, the staff member shall report the information by direct data entry into the Iowa Medicaid portal access (IMPA) system. The case manager is responsible for reporting the incident if the provider of service has not already reported the incident.

- (3) The following information shall be reported:

1. The name of the member involved;
2. The date, time, and location where the incident occurred;
3. A description of the incident;
4. The names of all provider staff and others who were present at the time of the incident or who responded after becoming aware of the incident. The confidentiality of other Medicaid-eligible members or non-Medicaid-eligible persons who were present must be maintained by the use of initials or other means;
5. The action taken to manage or respond to the incident;
6. The resolution of or follow-up to the incident; and
7. The date the report is made and the handwritten or electronic signature of the person making the report.

(4) When complete information about the incident is not available at the time of the initial report, the case management services provider must submit follow-up reports until the case manager is satisfied with the incident resolution and follow-up.

(5) The case management services provider shall maintain the completed report in a centralized file with a notation in the member's file.

(6) The case management services provider shall track incident data and analyze trends to assess the health and safety of members served and to determine whether changes need to be made for service implementation or whether staff training is needed to reduce the number or severity of incidents.

b. When an incident report for a major incident is received from any provider, the case manager shall monitor the situation to ensure that the member's needs continue to be met.

c. When any major incident occurs, the case manager shall reevaluate the risk factors identified in the risk assessment portion of the service plan in order to ensure the continued health, safety, and welfare of the member. Documentation must be made in the person-centered service plan of this review and follow-up activities.

90.7(2) *Reporting procedures for minor incidents.* Minor incidents may be reported in any format designated by the case management services provider. When a minor incident occurs, or a staff member becomes aware of a minor incident, the staff member involved shall submit the completed incident report to the staff member's supervisor within 72 hours of the incident. The completed report shall be maintained in a centralized file with a notation in the member's file.

90.7(3) *Quality assurance.* Case management services providers shall cooperate with quality assurance activities conducted by Iowa Medicaid or a Medicaid managed care organization, as well as any other state or federal entity with oversight authority to ensure the health, safety, and welfare of Medicaid members. These activities may include, but are not limited to:

- a.* Postpayment review of case management services;
- b.* Review of incident reports;
- c.* Review of reports of abuse or neglect; and
- d.* Technical assistance in determining the need for service.

[ARC 4897C, IAB 2/12/20, effective 3/18/20; ARC 6854C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code section 249A.4.

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¹ January 1, 2003, effective date of 90.2(5) and 90.3 delayed 70 days by the Administrative Rules Review Committee at a special meeting held December 19, 2002.

CHAPTER 98
SUPPORT ENFORCEMENT SERVICES

PREAMBLE

The child support recovery unit is charged with the responsibility to provide the enforcement services delineated in this chapter.

[ARC 5417C, IAB 2/10/21, effective 4/1/21]

DIVISION I
MEDICAL SUPPORT ENFORCEMENT

441—98.1(252E) Definitions.

“*Medical support*” means either the provision of health care coverage or the payment of cash medical support. Medical support is not alimony.

“*Obligee*” means a parent or other natural person legally entitled to receive a support payment on behalf of a child.

“*Obligor*” means a parent or other natural person legally responsible for the support of a dependent.
[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.2(252E) Provision of services. The child support recovery unit shall provide medical support services to public assistance and nonpublic assistance recipients of child support services. Unless good cause has been established, recipients of public assistance are required to cooperate with the child support recovery unit as a condition of eligibility as prescribed in rule 441—75.14(249A).

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.3(252E) Establishing medical support. Rescinded ARC 4112C, IAB 11/7/18, effective 2/15/19.

441—98.4(252E) Accessibility of the health benefit plan. Rescinded ARC 4112C, IAB 11/7/18, effective 2/15/19.

441—98.5(252E) Health benefit plan information. The unit shall gather information concerning a health benefit plan.

98.5(1) Information from an employer. The unit shall gather information concerning a health benefit plan an employer may offer an obligor as follows:

- a. The unit may send Form 470-0177M whenever a potential employer is identified.
- b. The unit shall secure information about health care coverage from a known employer on Form 470-2743 when Form 470-3818 or an order has been forwarded to the employer pursuant to Iowa Code section 252E.4.

98.5(2) Information from an obligor. The unit may secure medical support information from an obligor on Form 470-0413.

98.5(3) Disposition of information. The unit shall provide the information:

a. To the Medicaid agency and to the obligee, when requested, when the dependent is a recipient of Medicaid.

b. To the obligee, when requested, when the dependent is not a recipient of Medicaid.

[ARC 4112C, IAB 11/7/18, effective 2/15/19; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.6(252E) Insurer authorization. When the obligor does not provide to the insurer the signed documents necessary to enroll and process claims for the dependent for whom support is ordered, the insurer is authorized to accept the signature of the obligee or the department’s designee on necessary forms. For purposes of Division I of this chapter, the third-party liability unit is the department’s designee when support is assigned.

441—98.7(252E) Enforcement.

98.7(1) Medical support enforcement. For the purposes of enforcement, medical support may be reduced to a dollar amount and collected through the same remedies available for the collection and enforcement of child support.

98.7(2) Health care coverage.

a. If an obligor was ordered to provide health care coverage under an order but did not comply with the order, the child support recovery unit may implement the order by forwarding to the employer a copy of the order, an ex parte order as provided in Iowa Code section 252E.4, or Form 470-3818.

b. If the child support recovery unit implements an order under this subrule, the unit shall send a notice to the obligor at the last-known address of the obligor by regular mail. The notice shall contain the following information:

- (1) A statement of the obligor's right to an informal conference.
- (2) The process to request an informal conference.
- (3) The obligor's right to file a motion to quash with the district court.

98.7(3) Termination of employment. When the child support recovery unit receives information indicating the obligor's employment has terminated, the unit shall secure the status of the health benefit plan by sending Form 470-3218 to the employer.

If no response is received within 30 days of sending Form 470-3218, the unit shall send a second request on Form 470-3219 to the employer.

[ARC 4112C, IAB 11/7/18, effective 2/15/19; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.8(252E) Contesting the order. The obligor may contest the enforcement of medical support by means of an informal conference with the child support recovery unit, or by filing a motion to quash.

98.8(1) Motion to quash. Procedures for filing a motion to quash the order are specified under Iowa Code sections 252D.31 and 252E.6A.

98.8(2) Informal conference.

a. The obligor shall be entitled to only one informal conference for each new employer to which the unit has forwarded Form 470-3818 or an order under Iowa Code section 252E.4 to enforce medical support.

b. Procedures for the informal conference are as follows:

(1) The child support recovery unit shall inform the obligor in writing of the right to request an informal conference.

(2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the enforcement was entered in error.

(3) The obligor shall request an informal conference in writing, within 15 calendar days from the date of the notice of the right to an informal conference, or at any time if a mistake of fact regarding the identity of the obligor is believed to have been made.

(4) The child support recovery unit shall schedule an informal conference within 15 calendar days of the receipt of a written request from the obligor or the obligor's representative.

(5) The child support recovery unit may conduct the conference in person or by telephone.

(6) If the obligor fails to attend the conference, only one alternative time shall be scheduled by the child support recovery unit.

(7) The child support recovery unit shall issue a written decision to the obligor within ten calendar days of the conference.

c. The issues to be reviewed at the conference shall be as follows:

(1) Whether the identity of the obligor is in error.

(2) Whether the obligor is already providing health care coverage for the dependent.

(3) Whether the availability of dependent health care coverage is in error.

(4) Whether the obligor was ordered to provide health care coverage under the support order.

d. The results in an informal conference shall in no way affect the right of the obligor to file a motion to quash the order under Iowa Code section 252E.6A.

[ARC 4112C, IAB 11/7/18, effective 2/15/19; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.9 to 98.20 Reserved.

DIVISION II
INCOME WITHHOLDING
PART A
DELINQUENT SUPPORT PAYMENTS

441—98.21(252D) When applicable. When there is a delinquency in an amount equal to the support payable for one month as specified by an order for support or reimbursement order and the child support recovery unit is providing services under 441—Chapter 95, the unit shall enter an order to withhold the obligor's income not exempt by state or federal law to require the income withheld to be paid to the collection services center to pay the support obligation. An income withholding order shall also be entered to collect the unpaid balance of a judgment for the reimbursement of a support debt when a repayment schedule is not specified in the order establishing the judgment.

441—98.22 and 98.23 Reserved.

441—98.24(252D) Amount of withholding. The child support recovery unit shall determine the amount to be withheld by the employer or other income providers as follows:

98.24(1) *Current support obligation exists.* When a current support obligation exists, the amount withheld shall be an amount equal to the current support obligation, and an additional amount equal to 20 percent of the current support obligation to be applied toward the liquidation of any delinquency. However, the amount withheld to be applied toward the liquidation of any delinquency shall be 50 percent of the current support obligation for any support order entered or modified prior to July 1, 1998, and for which an income withholding order has been filed by the Iowa child support recovery unit prior to July 1, 1998.

98.24(2) *Current obligation ended.* When the current support obligation has ended or has been suspended, the income withholding order shall remain in effect until any delinquency has been satisfied. The amount withheld shall be equal to the amount of the most recent prior current support obligation which is greater than zero. However, in the following circumstances, the amount withheld shall be 20 percent of the amount owed for current support at the time the obligation ended or was suspended:

- a. There has been a change of legal custody from the obligee to the obligor.
- b. The obligee and obligor have reconciled and have obtained a modification ending the current support obligation.
- c. The current obligation is suspended through the suspension process.
- d. In a foster care case, the order for parental liability ended when the child left placement, or an order ending the liability has been entered and the child in foster care has returned to the home of a parent ordered to pay parental liability. In this situation, the amount withheld shall be reduced to 20 percent of the current support amount when the obligation ended, but only for the parent with whom the child resides.

98.24(3) *No support ordered.* When there is no current child support ordered and the obligation is solely the result of a judgment which does not specify a repayment schedule, the withholding amount shall be set at the amount for one person from the FIP schedule of basic needs.

98.24(4) *Lump-sum income source.* Notwithstanding subrules 98.24(1), 98.24(2), and 98.24(3), when the obligor is paid by a lump-sum income source, the withholding amount may include all current and delinquent support due through the current month. Lump-sum income includes income received in a sole payment or in payments that occur at two-month or greater intervals.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.25(252D) Amendment of amount of withholding due to hardship.

98.25(1) *Request for amendment.* If subrule 98.24(2) or 98.24(3) applies, the obligor may request at any time an amendment of the amount withheld as payment toward the delinquency or reimbursement on the grounds of hardship. The obligor must submit the request in writing to the child support recovery unit.

98.25(2) *Hardship criterion.* Hardship exists if the obligor's income is equal to or less than 200 percent of the poverty level for one person according to the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

a. If hardship is claimed by the obligor, the child support recovery unit may verify income from:

- (1) The employer or other income provider of the obligor.
- (2) The obligor.
- (3) The state employment security agency.
- (4) Other records available in accordance with Iowa Code section 252B.9.

b. If the hardship criterion is met, the amount withheld as payment toward the delinquency may be amended as follows:

(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure shall be multiplied by the most recent prior current support obligation or the amount determined pursuant to subrule 98.24(3), as applicable, to determine the amended amount. Notwithstanding this calculation, the amended amount shall not be less than \$15 per month.

(2) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or the amended amount determined in subparagraph 98.25(2) "b"(1) is to be withheld.

98.25(3) *Hardship period.* If the hardship criterion in subrule 98.25(2) is met, the child support recovery unit will grant the amended amount of withholding for a period of two years, subject to the provisions of subrule 98.25(6). However, if the obligor is receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits, the obligor is deemed to continue to meet the hardship criterion for the duration of those benefits.

98.25(4) *Denying requests.* A hardship request may be denied if:

- a.* The criterion in subrule 98.25(2) is not met.
- b.* The obligor has been granted an amended amount of withholding based on this rule within the last two years and that hardship period will not expire in less than 30 days.
- c.* The obligor's previous hardship period expired within the last six months and, within 30 days prior to the expiration date of the previous hardship period, the obligor did not submit the following to the child support recovery unit:

- (1) A written request for hardship; or
- (2) Verification of the obligor's income, and the child support recovery unit was not able to verify the obligor's income as described in paragraph 98.25(2) "a."

98.25(5) *Notice requirements.* The child support recovery unit will provide written notification to the obligor of the result of the hardship request.

a. When a hardship request is granted, the written notification will include the amended amount of withholding and the date the hardship period will expire.

b. When a hardship request is denied, the written notification will include the reason for denial.

98.25(6) *Termination of hardship prior to expiration date.* The hardship period will automatically end, regardless of expiration date, if any of the following occurs:

- a.* A current support obligation is added to the support order.
- b.* The current support obligation was previously suspended and is reinstated.
- c.* The delinquency has been paid in full.
- d.* The obligor was receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits at the time the hardship request was granted, and the child support recovery unit has verified that the obligor is no longer receiving social security disability benefits, social security retirement benefits, or supplemental security income disability benefits.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.26(252D) Additional information about hardship. The child support recovery unit shall make reasonable efforts within 13 months after January 1, 2019, to identify and incrementally notify obligors who may be impacted by the changes to hardship procedures in rule 441—98.25(252D).
[ARC 4112C, IAB 11/7/18, effective 2/15/19]

These rules are intended to implement Iowa Code chapter 252D.

441—98.27 to 98.30 Reserved.

PART B
IMMEDIATE INCOME WITHHOLDING

441—98.31(252D) Effective date. In cases for which the child support recovery unit is providing enforcement services, the income of the obligor is subject to immediate withholding pursuant to Iowa Code section 252D.8 without regard to the existence of a delinquency in the payment of support.

441—98.32(252D) Withholding automatic. Immediate withholding of income is automatic without additional notice to the obligor unless:

98.32(1) Good cause exists. Good cause is found to exist by the court or the child support recovery unit. For purposes of this rule, “good cause” is defined as the posting of a secured bond by the obligor sufficient to pay all current and future child support obligations, including any delinquency which may accrue.

98.32(2) Written agreement exists. A written agreement is reached between both parties which provides for an alternative arrangement for payment of child support subject to the following conditions:

a. Unless approved by the child support recovery unit, written agreements between the obligee and obligor to waive immediate income withholding become void when child support is assigned to this state or to another state pursuant to a statute of that jurisdiction.

b. All payments pursuant to any written agreement shall be paid as directed in Iowa Code sections 252B.14 and 598.22.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.33 Reserved.

441—98.34(252D) Approval of request for immediate income withholding. When the obligee or other party to the proceeding requests immediate withholding, the child support recovery unit shall determine whether the request shall be approved.

98.34(1) Basis for approval. Approval of a request for immediate income withholding by the child support recovery unit may be based on:

a. Past payment record of the obligor which demonstrates an inconsistent compliance with the support order.

b. Whether the state of Iowa is providing public assistance.

98.34(2) Request denied. The child support recovery unit may not approve a request for immediate income withholding on cases where no public assistance has been expended and there is a prior written agreement between the obligee and obligor which has been approved by court order.

441—98.35(252D) Modification or termination of withholding. Rescinded ARC 4112C, IAB 11/7/18, effective 2/15/19.

441—98.36(252D) Immediate income withholding amounts. The amount withheld shall be the amount of the current support obligation as specified in the support order. If a judgment for accrued support is established in the support order, the amount withheld shall be the amount due for current support and the periodic payment amount due for the accrued support as specified in the order. If no periodic payment for the accrued support is established in the support order, the amount withheld shall be the amount due for current support plus 10 percent of the amount of the current obligation to be applied to the accrued support.

441—98.37(252D) Immediate income withholding amounts when current support has ended. When the child support obligation has ended, the amounts to be withheld shall be in accordance with subrule 98.24(2).

These rules are intended to implement Iowa Code chapter 252D.

441—98.38 Reserved.

PART C
INCOME WITHHOLDING—GENERAL PROVISIONS

441—98.39(252D,252E) Provisions for medical support. An income withholding order or notice of income withholding may also include provisions for enforcement of medical support when medical support is included in the support order. The income withholding order or notice of income withholding may require implementation of dependent health care coverage pursuant to Iowa Code chapter 252E or the withholding of a dollar amount for medical support. Amounts withheld for medical support shall be determined in the same manner as amounts withheld for child support.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.40(252D,252E) Maximum amounts to be withheld. An income withholding order or a notice issued by the child support recovery unit shall require that the employer or other income provider withhold no more than the maximum amounts allowed under the Federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b).

98.40(1) The amount of income subject to withholding shall be limited to 50 percent of the nonexempt disposable income of the obligor unless there is more than one support order for which the obligor is obligated and the criteria of 15 U.S.C. Section 1673(b) are met, or the obligor agrees to a greater amount within these limits.

98.40(2) Disposable income means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.41(252D) Multiple obligations. In the event that an obligor has more than one support obligation that is being enforced by the child support recovery unit, the unit may enter an income withholding order to enforce each obligation. The amount specified to be withheld on the delinquency under the income withholding order or notice shall be determined in accordance with rule 441—98.24(252D).

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.42(252D) Notice to employer and obligor. The child support recovery unit shall send the obligor and the employer or other income provider a notice of income withholding as follows:

98.42(1) Notice to employer. The unit may send notice to the employer or other income provider by regular mail or by electronic means in accordance with Iowa Code chapter 252D. If the unit is sending notice by regular mail, it shall send Form 470-3272 or a notice in the standard format prescribed by 42 U.S.C. §666(b)(6)(A). If the unit is sending the notice by electronic means, it may include notice of more than one obligor's order and need only state once provisions which are applicable to all obligors, such as the information in paragraphs 98.42(1) "d," "f," "g," and "i." The statement of provisions applicable to all obligors may be sent by regular mail or electronic means. The notice of income withholding shall contain information such as the following:

- a. The obligor's name and social security number.
- b. The amount of current support to withhold.
- c. The amount of support to withhold for payment of delinquent support, if any.
- d. The amount an income provider may deduct for costs of processing each support payment.
- e. The child support case number.

- f.* The location to which payments are sent.
- g.* The maximum amount that can be withheld for payment of support as specified in rule 441—98.40(252D,252E).
- h.* The method to calculate net income.
- i.* Responsibilities of the income provider as specified in Iowa Code section 252D.17.
- j.* Responsibility, if any, of the income provider to enroll the obligor's dependent for coverage under a health benefit plan.

98.42(2) *Notice to obligor.* Form 470-2624 shall be sent to the last-known address of the obligor by regular mail. The notice shall contain the following information:

- a.* A statement of the obligor's right to an informal conference.
- b.* The process to request an informal conference.
- c.* The obligor's right to claim hardship criteria and the process for a claim.
- d.* The obligor's right to file a motion to quash the income withholding order or notice with the district court.
- e.* The information provided to the employer or other income provider, or a copy of the notice sent to the employer or other income provider.
- f.* The amount of any delinquency.

98.42(3) *Standard format.* As provided in Iowa Code section 252D.17, an order or notice of an order for income withholding shall be in a standard format prescribed by the child support recovery unit. Form 470-3272 is the standard format prescribed by the child support recovery unit, and the unit shall make a copy of the form available to the state court administrator and the Iowa state bar association.

[ARC 4112C, IAB 11/7/18, effective 2/15/19; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.43(252D) *Contesting the withholding.* The obligor may contest the income withholding by means of an informal conference with the child support recovery unit or by filing a motion to quash.

98.43(1) *Motion to quash.* Procedures for filing a motion to quash the order or the notice of income withholding are specified in Iowa Code chapter 252D.

98.43(2) *Informal conference.*

a. The obligor shall be entitled to only one informal conference for each new or modified income withholding order or notice issued by the child support recovery unit that specifies a new or modified total amount to withhold.

b. Procedures for the informal conference are as follows:

- (1) The child support recovery unit shall inform the obligor in writing of the right to request an informal conference.
- (2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the withholding is in error.
- (3) The obligor shall request an informal conference in writing.
- (4) The child support recovery unit shall schedule an informal conference within 15 calendar days of the receipt of a written request from the obligor or the obligor's representative.
- (5) The child support recovery unit may conduct the conference in person or by telephone.
- (6) If the obligor fails to attend the conference, only one alternative time shall be scheduled by the child support recovery unit.
- (7) The child support recovery unit shall issue a written decision to the obligor within ten calendar days of the conference.
- (8) If the child support recovery unit has not complied with rule 441—98.24(252D), it shall then adjust the income withholding amount.

c. The issues to be reviewed at the conference shall be as follows:

- (1) For all income withholding orders or notices, whether:
 1. The identity of the obligor is in error.
 2. The amount of the current support obligation is in error.
- (2) For orders or notices resulting from the existence of a delinquency, whether:
 1. The amount of delinquent support is in error.

2. For income withholding orders or notices issued after November 1, 1990, whether the guidelines described at rule 441—98.24(252D) were followed.

(3) For immediate income withholding orders or notices, whether the criteria of rules 441—98.32(252D) and 441—98.34(252D) were appropriately applied.

d. The results of an informal conference shall in no way affect the right of the obligor to file a motion to quash the income withholding order or notice with the court.

98.43(3) *Income withholding issued from another state.* The child support recovery unit shall follow procedures for a motion to quash or a request for hardship or conduct an informal conference based on an income withholding order or notice issued in another state only if the unit is providing services under 441—Chapter 95.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.44(252D) Termination of order. The child support recovery unit may, by ex parte order, terminate an income withholding order under the following conditions:

98.44(1) *Order entered in error.* The child support recovery unit shall terminate an income withholding order upon determination that the order was entered in error as follows:

a. The person named as the obligor in the income withholding order is not the person required to provide support under the support order being enforced.

b. For orders resulting from the existence of a delinquency, the required minimum delinquency did not exist at the time the income withholding order was entered.

98.44(2) *No support due.* In cases for which services are being provided by the child support recovery unit, the child support recovery unit shall terminate an income withholding order previously entered by the unit when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order. In no case shall payment of overdue support be the sole basis for termination of withholding.

a. to d. Rescinded IAB 9/1/93, effective 11/1/93.

98.44(3) *Other circumstances.* The child support recovery unit may revoke an income withholding order under other circumstances provided the conditions of Iowa Code chapter 252D are met.

441—98.45(252D) Modification of income withholding. The child support recovery unit may modify a previously issued income withholding order or notice according to the guidelines established under rule 441—98.24(252D) if it is determined that:

98.45(1) *Current support obligation changed.* There has been a change in the amount of the current support obligation.

98.45(2) *Amount in error.* The amount required to be withheld under the income withholding order or notice is in error as follows:

a. The amount required to be withheld as current support is not the amount specified in the order for support being enforced.

b. The guidelines established in rule 441—98.24(252D) were not followed.

98.45(3) *Past-due support paid.* Any past-due support debt has been paid in full. The withholding order or notice shall be modified to require that only the current support obligation be withheld from the income of the obligor. Should a delinquency later accrue, the withholding order or notice may again be modified to secure an additional payment toward the delinquency. The amount of the arrears payment shall be set at 20 percent of the current support amount.

98.45(4) *Income withholding and determination of controlling orders.* An obligation amount different than what the child support recovery unit has been enforcing is established upon the determination of controlling order as allowed in Iowa Code section 252K.207. Upon the change to the new obligation amount, the amount withheld to be applied toward the liquidation of any delinquency shall be 20 percent.

98.45(5) *Income withholding and review and adjustment of orders.* The child support recovery unit has conducted a review of the obligation pursuant to 441—Chapter 99, Division IV. The unit shall

modify the amount withheld to be applied toward the liquidation of any delinquency to 20 percent upon completion of the review and adjustment process.

98.45(6) *Implementation or termination of amended amount of withholding due to hardship.* The child support recovery unit has determined that the withholding order should be modified based upon the hardship provisions in rule 441—98.25(252D).

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.46(252D) Refunds of amounts improperly withheld. The child support recovery unit shall refund to the obligor any amounts improperly withheld and received by the department under an income withholding order or notice issued by the unit, subject to the following:

98.46(1) *Services provided by the department.* Only those amounts received by the department during the period enforcement services are being provided are subject to refund.

98.46(2) *Satisfaction of amount to withhold.* No refund shall be made unless amounts have been collected which fully satisfy the amount specified in the income withholding order or notice for the withholding period during which income has been generated.

98.46(3) *When issued.* Any amounts received in excess of the amounts specified in the order or notice to withhold shall be issued to the obligor within 30 days of discovery by the child support recovery unit, unless the obligor requests in writing that these amounts be credited toward the delinquency or future child support. If there is a dispute regarding whether there is an overpayment, the obligor may request an informal conference by following the procedures set out in subparagraphs 98.43(2) “a”(3) through (7). This procedure shall not preclude the obligor from utilizing other civil remedies.

98.46(4) *Recovery by department.* The department may recover payments from the obligee in excess of those described in subrule 98.46(2) which have been received by the department and improperly forwarded to the obligee.

[ARC 4112C, IAB 11/7/18, effective 2/15/19]

441—98.47(96) Child support intercept of unemployment insurance benefits. When the department of workforce development notifies the child support recovery unit that an individual who owes a child support obligation being enforced by the unit has been determined to be eligible for unemployment insurance benefits, the unit will enforce a child support obligation that is owed by an obligor but is not being met by intercept of unemployment insurance benefits. “Owed but not being met” means either current child support not being met or arrearages that are owed.

98.47(1) *Withholding.* The child support recovery unit shall intercept unemployment insurance benefits by initiating a withholding of income pursuant to Iowa Code chapter 252D and this division. The amount to be withheld through a withholding of unemployment insurance benefits shall not exceed the amount specified in 15 U.S.C. 1673(b).

98.47(2) *Provision of receipt.* A receipt of the payments intercepted through unemployment insurance benefits will be provided once a year, upon the obligor’s request to the child support recovery unit.

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C. 1673(b).

[ARC 5417C, IAB 2/10/21, effective 4/1/21]

These rules are intended to implement Iowa Code chapters 252D and 252E.

441—98.48 to 98.50 Reserved.

DIVISION III
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

441—98.51 to 98.60 Renumbered as 99.61 to 99.70, IAB 9/1/93, effective 11/1/93.

DIVISION IV
PUBLICATION OF NAMES

441—98.61(252B) List for publication. The department may compile and make available for publication a list of cases in which no payment has been credited to an accrued or accruing support obligation during a previous three-month period, subject to the following:

98.61(1) *Support order entered in Iowa.* The list shall include cases with a support order entered in Iowa which is being enforced by the child support recovery unit.

98.61(2) *Support order entered in another state.* The list may include cases with a support order entered in another state, if another state has requested this service, has demonstrated that the provision of this service is not in conflict with the laws of the state where the support order is entered, and the order is being enforced by the child support recovery unit.

98.61(3) *When compiled.* The department shall determine when to compile the list, but shall not be required to do so.

98.61(4) *Case selection.* Case selection shall be based on the records of the department at the time the list is compiled. The three-month period of nonpayment shall end no earlier than one month prior to the date the list is compiled. When an obligor has multiple orders on a case, all orders contained in the child support recovery unit record may be listed.

98.61(5) *Good cause.* The name of the obligor shall not be included when there has been a finding of good cause for noncooperation with the child support recovery unit in a public assistance case pursuant to 441—Chapter 41 or 441—Chapter 75 and a determination has been made that enforcement may not proceed without risk of harm to the child or caretaker.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.62(252B) Releasing the list. The department may release the information, no more than twice annually, as follows:

98.62(1) *Release to media.* The department shall issue a press release to the weekly and daily newspapers in Iowa describing the manner in which a copy of the list may be obtained. Cost of producing the list shall be borne by the department. Costs of producing and transmitting a copy of the list shall be borne by the recipient of the copy.

98.62(2) *Availability of list.* Once released, the list shall be provided to other persons upon payment of an amount to cover the cost of producing a copy as specified in 441—Chapter 9. Requests shall be directed to the Bureau of Collections, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code section 252B.9.

441—98.63 to 98.70 Reserved.

DIVISION V
ADMINISTRATIVE SEEK EMPLOYMENT ORDERS

441—98.71(252B) Seek employment order. The child support recovery unit (CSRU) may enter an ex parte order requiring the obligor to seek employment if employment of the obligor cannot be verified and if the obligor has failed to make support payments. Any obligor who has failed to make support payments and for whom employment cannot be verified is subject to issuance of an administrative order to seek employment.

441—98.72(252B) Effective date of order. The seek employment order shall be effective 15 days after issuance of the order to the obligor. This 15-day period shall serve as advance notice to the obligor.

441—98.73(252B) Method and requirements of reporting. The obligor shall complete Form 470-3155, which shall be submitted to the unit on a weekly basis throughout the duration of the order unless the obligor has a valid reason for not complying with the order. The obligor shall document at

least five new attempts to find employment on the form each week. The same employer may not be reported more than once per week.

The obligor shall include the names, addresses, and the telephone numbers of each of the five employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom the inquiry was directed.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.74(252B) Reasons for noncompliance. Upon verification, certain conditions shall be considered valid reasons for noncompliance. At the request of the child support recovery unit (CSRU), the obligor shall provide verification of any reason for noncompliance with the order when the information is not available to CSRU through online sources. Valid reasons for noncompliance and acceptable verification are:

98.74(1) Receipt of social security, supplemental security income (SSI), or the family investment program (FIP). Receipt of social security, SSI, or FIP is considered a valid reason for noncompliance when verified by information contained in online sources available to CSRU or written verification from the agency providing the benefits.

98.74(2) Temporary illness or disability. Temporary illness or disability of the obligor or other household member is considered a valid reason upon receipt of completed Form 470-3158 verifying the obligor's inability to seek or accept employment.

98.74(3) High school student. Attending high school is considered a valid reason upon verification from the high school.

98.74(4) Incarceration. Incarceration is considered a valid reason when verified through online information available to CSRU or on receipt of verification from the institution.

98.74(5) Substance abuse treatment. Participating in a supervised substance abuse treatment program that is associated with a treatment center is considered a valid reason upon verification from the treatment center.

98.74(6) Job training. Participation in a job training or job seeking program through the department of employment services as a result of receiving benefits from the Supplemental Nutrition Assistance Program (SNAP) is considered a valid reason upon receipt of verification from the department of employment services.

98.74(7) Employment or self-employment. Employment or self-employment is considered a valid reason upon verification through the employer for those employed or through tax documents or business records for those self-employed.

98.74(8) Payment of support. Payment on the account equal to the amounts prescribed for income withholding in accordance with rule 441—98.24(252D) throughout the duration of the seek employment order is considered a valid reason upon verification of payments posted to the Iowa collection and reporting (ICAR) system.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.75(252B) Method of service. The seek employment order shall be served on the obligor by regular mail. Proof of service shall be completed according to Rule of Civil Procedure 1.442.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.76(252B) Duration of order. The seek employment order shall remain in effect for three months from the date of issuance unless CSRU determines the obligor has a valid reason for noncompliance as specified at rule 441—98.74(252B), at which time the order becomes unenforceable.

Upon acceptance of the reason for noncompliance, CSRU shall notify the obligor that the obligor is no longer required to comply with the seek employment order. Upon denial of the reason for noncompliance, CSRU shall notify the obligor that the obligor shall comply with the existing seek employment order. The notice shall be filed with the clerk of the district court. If the obligor disputes this decision, the obligor shall have recourse through the district court.

These rules are intended to implement Iowa Code section 252B.21.

441—98.77 to 98.80 Reserved.

DIVISION VI
OFFSET

441—98.81(252B) Definitions.

“Delinquent support” means a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include payments for parental liabilities not received as specified pursuant to 441—Chapter 156.

“Federal nontax payment” means an amount payable by the federal government which is subject to administrative offset for support under the federal Debt Collection Improvement Act, Pub.L. No. 104-134.

“Mistake of fact” means a mistake in the identity of the obligor or whether the delinquency meets the criteria for referral.

This rule is intended to implement Iowa Code chapter 252B.
[ARC 5417C, IAB 2/10/21, effective 4/1/21; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.82(252B) Offset against payment owed to a person by a state agency. The department will make a claim against a payment owed to an obligor by a state agency when support payments are delinquent as set forth in rule 11—40.1(8A). A claim against a payment owed to an obligor shall be applied to court-ordered support which the department is attempting to collect pursuant to Iowa Code chapter 252B.

98.82(1) Case selection. The department shall submit to the department of administrative services, at least monthly, a list of obligors who are delinquent at least \$50 in support payments.

98.82(2) Notification of offset. Within ten days of receiving notification from the department of administrative services that the obligor is entitled to a payment, the department shall:

a. Send a preoffset notice to the obligor. The preoffset notice shall inform the obligor of the amount the department intends to claim and apply to the support obligation and shall contain all information required by Iowa Code subsection 8A.504(2) and 11—subrule 40.4(4).

b. Notify the department of administrative services that the preoffset notice has been sent to the obligor.

98.82(3) Appeal process. An obligor may contest the department’s claim by submitting a written request to the department. A hearing shall be granted pursuant to rules in 441—Chapter 7 if the obligor’s request is submitted within 15 days of the date of the preoffset notice. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

98.82(4) Joint owner. A joint owner’s proportionate share of the payment, as determined by the department, shall be released unless other claims are made on that portion of the payment. The department must receive a request for release of a joint owner’s share within 15 days of the date of the preoffset notice. The request may be made by either owner.

98.82(5) Final disposition of offset. The department shall notify an obligor of the final decision regarding the claim against the offset by sending a final disposition of support recovery claim notice to the obligor.

98.82(6) Distribution of offset amount. Offsets shall be applied in accordance with rules 441—95.3(252B) and 441—95.4(252B).

98.82(7) Percentage of payment offset. The amount of offset shall be 50 percent of the total payment due the obligor, unless the payment results from lottery winnings, from gambling winnings, from sports wagering winnings, or from a payment for a claim under treasurer of state rules on unclaimed property

at 781—Chapter 9, in which case the amount of offset shall be 100 percent of the payment. The amount taken shall not exceed the delinquent amount owed by the obligor.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4 and Iowa Code subsection 8A.504(2).

[ARC 9177B, IAB 11/3/10, effective 1/1/11; ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—98.83(252B) Offset against state income tax refund or rebate. The department will make a claim against an obligor's state income tax refund or rebate when a support payment is delinquent as set forth in 11—Chapter 40. A claim against an obligor's state income tax refund or rebate shall apply to support which the department is attempting to collect.

98.83(1) By the first day of each month, the department shall submit to the department of administrative services a list of obligors who are delinquent at least \$50 in support payments.

98.83(2) When the department claims an obligor's state income tax refund or rebate, the department shall send a preoffset notice to the obligor to inform the obligor of the amount the department intends to claim and apply to support. The department shall send a preoffset notice when:

a. The department of administrative services notifies the department that the obligor is entitled to a state income tax refund or rebate; and

b. The obligor has a delinquency of \$50 or greater.

98.83(3) When the obligor wishes to contest a claim, a written request shall be submitted to the department within 15 days of the date of the preoffset notice. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

98.83(4) The spouse's proportionate share of a joint return filed with an obligor, as determined by the department of revenue, shall be released by the department of revenue unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be received by the department within 15 days of the date of the preoffset notice.

98.83(5) The department shall refund any amount incorrectly offset to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due.

98.83(6) The department shall notify an obligor of the final decision regarding the claim against the tax refund or rebate by sending a final disposition of support recovery claim notice to the obligor.

98.83(7) Offsets shall be applied as provided in rule 441—95.3(252B).

This rule is intended to implement Iowa Code sections 8A.504, 252B.3, 252B.4 and 252B.5(4).
[ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—98.84(252B) Offset against federal income tax refund and federal nontax payment. The department will make a claim against an obligor's federal income tax refund or federal nontax payment when delinquent support is owed. For purposes of this offset, delinquent support shall include the entire balance of a judgment for accrued support, as provided in Iowa Code section 252B.5(4).

98.84(1) *Amount of assigned support.* If the delinquent support is assigned to the department, the amount of delinquent support shall be at least \$150, calculated by combining the assigned delinquent support in all of the obligor's cases in which the assigned delinquent support is at least \$50.

98.84(2) *Amount of nonassigned support.* If delinquent support is not assigned to the department, the claim shall be made if the amount of delinquent support is at least \$500, calculated by combining the nonassigned delinquent support in all of the obligor's cases in which the nonassigned delinquent support is at least \$50.

a. The amount distributed to an obligee shall be the amount remaining following payment of a support delinquency assigned to the department. The department shall distribute to an obligee the amount collected from an offset according to subrule 98.84(9) within the following time frames:

(1) Within six months from the date the department applies an offset amount from a joint income tax refund to the child support account of the responsible person, or within 15 days of the date of resolution of an appeal under subrule 98.84(8), whichever is later, or

(2) Within 30 days from the date the department applies an offset amount from a single income tax refund to the child support account of the responsible person, or within 15 days of the date of resolution of an appeal under subrule 98.84(8), whichever is later.

(3) However, the department is not required to distribute until it has received the amount collected from an offset from the federal Department of the Treasury.

b. Federal nontax payment offsets shall be applied as provided in rule 441—95.3(252B).

98.84(3) Notification to federal agency. The department shall, by October 1 of each year or at times as permitted or specified by federal regulations, submit a notification(s) of liability for delinquent support to the federal Office of Child Support Enforcement.

98.84(4) Preoffset notice and review. Each obligor who does not have an existing support debt on record with the federal Office of Child Support Enforcement will be sent a preoffset notice in writing, using address information provided to the federal Office of Child Support Enforcement, stating the amount of the delinquent support certified for offset.

a. Individuals whose names were submitted for federal offset who wish to dispute the offset must notify the department in writing within the time period specified in the preoffset notice.

b. Upon receipt of a complaint from the individual disputing the submission for offset, the child support recovery unit shall conduct a review to determine if there is a mistake of fact and respond to the individual in writing within ten days.

98.84(5) Recalculation of delinquency. When the records of the department differ with those of the obligor for determining the amount of the delinquent support, the obligor may provide and the department will accept documents verifying modifications of the order, and records of payments made pursuant to state law, and will recalculate the delinquency.

98.84(6) Notification of modification or elimination. The department shall notify the federal Office of Child Support Enforcement, within time frames established by the federal Office of Child Support Enforcement, of any modification or elimination of an amount referred for offset.

98.84(7) Failure to timely respond. When an individual does not respond to the preoffset notice within the specified time even though the department later agrees a certification error was made, the individual must wait for corrective action as specified in subrule 98.84(8).

98.84(8) Offset notice, appeal, and refund. The federal Department of the Treasury will send notice that a federal income tax refund or federal nontax payment owed to the obligor has been intercepted. When the unit receives information from the federal Office of Child Support Enforcement regarding the offset, or when the individual whose name was submitted for federal offset notifies the department that the individual has received an offset notice, the department shall issue to that individual Form 470-3684.

a. The individual whose name was submitted for federal offset shall have 15 days from the date of the notice to contest the offset by initiating an administrative appeal pursuant to 441—Chapter 7. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

b. The department shall refund the incorrect portion of a federal income tax offset or federal nontax payment offset within 30 days following verification of the offset amount. Verification shall mean a listing from the federal Office of Child Support Enforcement containing the obligor's name and the amount of tax refund or nontax payment to which the obligor is entitled. The date the department receives the federal listing will be the beginning day of the 30-day period in which to make a refund.

c. The department shall refund the amount incorrectly set off to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due.

98.84(9) Application of offsets. Offsets of federal income tax refunds shall be applied to delinquent support only. The department shall first apply the amount collected from an offset to delinquent support assigned to the department under Iowa Code chapters 234 and 239B. The department shall then apply any amount remaining in equal proportions to delinquent support due individuals receiving nonassistance services.

This rule is intended to implement Iowa Code sections 252B.3, 252B.4, and 252B.5.
[ARC 5417C, IAB 2/10/21, effective 4/1/21; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.85 to 98.90 Reserved.

DIVISION VII
ADMINISTRATIVE LEVY

441—98.91(252I) Administrative levy. When there is a delinquency in an amount equal to the ordered support payable for one month, the child support recovery unit may issue an administrative levy to the obligor's financial institution.

441—98.92 Reserved.

441—98.93(252I) Verification of accounts. The unit may contact a financial institution to obtain verification of the account number, the names and social security numbers listed on the account, and the account balance for an obligor's account. This contact may be by telephone or written communication on Form 470-3170, Asset Verification Form, or by computer printout.

441—98.94(252I) Notice to financial institution. The unit may send a notice to the financial institution with which the account is placed, directing that the financial institution forward to the collection services center all or a portion of the moneys in the obligor's account or accounts on the date the notice is received. The notice shall be sent by first-class mail, with proof of service completed according to Rule of Civil Procedure 1.442. The notice to the financial institution shall contain all of the information specified in Iowa Code chapter 252I.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.95(252I) Notice to support obligor. The unit shall notify an obligor, and any other party known to have an interest in the account, of the action. The notice shall contain all of the information specified in Iowa Code chapter 252I. The unit shall forward the notice by first-class mail within two working days of sending the notice to the financial institution. Proof of service shall be completed according to Rule of Civil Procedure 1.442.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.96(252I) Responsibilities of financial institution. Upon receipt of the notice of administrative levy, the financial institution shall follow procedures specified in Iowa Code section 252I.7 for encumbering and forwarding funds to collection services center. The financial institution shall encumber only the funds in the obligor's account on the day the notice is received. Any deposits made by the obligor after notice is received by the financial institution are not subject to the administrative levy process unless another notice is issued to the financial institution.

441—98.97(252I) Challenging the administrative levy. An obligor or an account holder of interest may challenge the administrative levy by submitting a written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice to the obligor as specified in rule 441—98.95(252I). Upon receipt of a challenge, the unit shall follow criteria and procedures specified in Iowa Code section 252I.8 for resolving the challenge.

98.97(1) Review of facts. The unit shall, upon receipt of a written challenge, review the facts of the case with the challenging party. Only a mistake of fact including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount of delinquent support due shall be considered as a reason to dismiss or modify the proceeding. If the unit determines that a mistake of fact has occurred, the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall notify the financial institution and the obligor that the administrative levy has been released.

b. If the amount of support due was incorrectly overstated, the unit shall notify the financial institution to release the excess moneys to the obligor and remit the remaining moneys.

98.97(2) Refunds of amounts improperly held. If a mistake of fact has occurred and money has already been forwarded from the financial institution, the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall refund the funds to the account and reimburse the account for any fees assessed by the financial institution.

b. If the amount of support due was incorrectly overstated, the unit shall refund a portion to the account. The unit is not required to reimburse the account for fees.

98.97(3) Request for district court hearing. If no mistake of fact is found, the unit shall send a notice to the challenging party by first-class mail. An obligor or an account holder may submit a second written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice. The unit shall request a hearing before the district court in the county the support order is filed. Procedures for filing a hearing are specified in Iowa Code chapter 252I.

98.97(4) Request for withdrawal. The challenging party may withdraw the challenge by submitting a written withdrawal to the person identified as the contact person for the unit in the notice at any time prior to the court hearing. The unit may withdraw the administrative levy at any time prior to the court hearing. The unit shall provide notice of the withdrawal to the financial institution and any account holder of interest by first-class mail.

These rules are intended to implement Iowa Code chapter 252I.

441—98.98 to 98.100 Reserved.

DIVISION VIII
LICENSE SANCTION

441—98.101(252J) Referral for license sanction. In the process referred to as license sanction, the child support recovery unit (CSRU) may refer an individual to a licensing agency for the suspension, revocation, nonissuance, or nonrenewal of a variety of licenses including, but not limited to, motor vehicle registrations, driver's licenses, business and professional licenses, and licenses for hunting, fishing, boating, or other recreational activity. In order to be referred to a licensing agency for license sanction, one of the following must apply:

98.101(1) Delinquent support payments. An obligor's support payments must be delinquent in an amount equal to the support payment for three months. CSRU may first refer for license sanction those obligors having the greatest number of months of support delinquency. CSRU shall not refer obligors whose support payments are being made under an income withholding order.

98.101(2) Subpoena or warrant. An individual must have failed to comply with a subpoena or warrant, as defined in Iowa Code chapter 252J, relating to a paternity or support proceeding. If a subpoena was issued, the individual must have failed to comply with either Form 470-3413 or an Interstate Subpoena as provided in subrule 96.2(1) within 15 days of the issuance of the subpoena, and proof of service of the subpoena was completed according to Rule of Civil Procedure 1.442.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.102(252J) Reasons for exemption. Certain conditions shall be considered valid reasons for exemption from the license sanction process. Upon verification of these conditions, CSRU shall bypass, exempt, or withdraw the individual's name from referral to licensing agencies for the purpose of applying a license sanction. When the information to verify the exemption is not available to CSRU through online sources, CSRU shall request, and the individual shall provide, verification of the reason for exemption. Valid reasons for exemption for failure to comply with a subpoena or warrant and acceptable verification are those listed in subrules 98.102(2), 98.102(3), 98.102(5), and 98.102(6). Valid reasons for exemption for delinquent support payments and acceptable verification are any of the following:

98.102(1) Receipt of social security, supplemental security income (SSI) or the family investment program (FIP). Receipt of social security, SSI, FIP, or county assistance (general relief, general assistance, community services, veteran's assistance), based upon the eligibility of the obligor, is

considered a valid reason for exemption when verified by information contained in online sources available to CSRU or written verification from the agency providing the benefits.

98.102(2) *Temporary illness or disability.* Temporary illness or disability of the individual or illness or disability of another household member which requires the presence of the individual in the home as caretaker is considered a valid reason for exemption upon receipt of a completed Form 470-3158 verifying the individual's or household member's inability to work.

98.102(3) *Incarceration.* Incarceration is considered a valid reason for exemption when verified through online information available to CSRU or upon receipt of verification from the institution.

98.102(4) *Job training.* Participation in a job-training or job-seeking program through the department of employment services as a result of receiving benefits from the Supplemental Nutrition Assistance Program is considered a valid reason for exemption upon receipt of verification from the department of employment services or verification through online information available to CSRU or upon receipt of a written statement from an income maintenance worker.

98.102(5) *Chemical dependency treatment.* Participation in a chemical dependency treatment program that is licensed by the department of public health or the joint commission on the accreditation of hospitals (JCAH) is considered a valid reason for exemption upon receipt of written verification from the professional staff of the program that participation in the program precludes the individual from working.

98.102(6) *Contempt process.* Involvement in a contempt action dealing with support issues is considered a valid reason for exemption from the license sanction process during the pendency of the contempt action.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.103(252J) Notice of potential sanction of license. When an individual meets the criteria for selection, CSRU may issue a notice to the individual of the potential sanction of any license held by the individual, using Form 470-3278, Official Notice of Potential License Sanction.

98.103(1) *Delinquent support payments.* CSRU shall inform the obligor that the obligor may make immediate payment of all current and past due child support, schedule a conference to review the action of CSRU, or request to enter into a payment agreement with the unit. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(2) *Subpoena or warrant.* CSRU shall inform the individual that the individual may comply with the subpoena or warrant, or schedule a conference to review the action of CSRU. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(3) *Certificate of noncompliance.* If an individual fails to respond in writing to the notice within 20 days, or if the individual requests a conference and fails to appear, the unit shall issue a Certificate of Noncompliance to applicable licensing authorities in accordance with Iowa Code section 252J.3.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.104(252J) Conference.

98.104(1) *Scheduling of conference.* Upon receipt from an individual of a written request for a conference, CSRU shall schedule a conference not more than 30 days in the future. At the request of either CSRU or the individual, the conference may be rescheduled one time. When setting the date and time of the conference, if notice was sent to an obligor under subrule 98.103(1), CSRU shall request the completion of Form 470-0204 and other financial information from both the obligor and the obligee as may be necessary to determine the obligor's ability to comply with the support obligation.

98.104(2) *Payment calculation.* If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an

additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall determine the obligee's income in accordance with 441—subrules 99.1(2) and 99.1(4). This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

98.104(3) Referral for review and adjustment. If the amount calculated in subrule 98.104(2) meets the criteria for review and adjustment as specified in rule 441—99.62(252B,252H), or administrative modification as specified in rule 441—99.82(252H) and subrules 441—99.83(1), 99.83(2) and 99.83(6) at the time CSRU provides the payment agreement to the obligor, CSRU shall also provide the obligor with any necessary forms to request a review and adjustment or administrative modification of the support obligation. The payment agreement remains in effect during the review and adjustment or administrative modification process.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.105(252J) Payment agreement. The License Sanction Payment Agreement shall require the obligor to pay the lower of the amount calculated in subrule 98.104(2) or the maximum amount payable under an income withholding order as specified in rule 441—98.24(252D).

98.105(1) Duration of payment agreement. The License Sanction Payment Agreement signed under this division shall remain in effect for at least one year from the date of issuance unless CSRU determines the obligor has a valid reason for exemption as specified in rule 441—98.102(252J). Except in those cases in which review and adjustment are in process, CSRU may, at the end of the year, begin the process of reviewing the case to ensure that the payment amount continues to accurately reflect the obligor's ability to pay as calculated in subrule 98.104(1).

98.105(2) Failure to comply. If at any time following the signing of a payment agreement the obligor fails to comply with all the terms of the agreement, CSRU shall issue Form 470-3274 to applicable licensing authorities in accordance with the provisions of Iowa Code chapter 252J.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.106(252J) Staying the process due to full payment of support. If the obligor, at any time, pays the total support owed, both current and past due, or an individual complies with the subpoena or warrant, CSRU shall stay the process, and any Form 470-3274 that has been issued shall be withdrawn by CSRU.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.107(252J) Duration of license sanction. Form 470-3274 shall remain in effect until the obligor pays all support owed, both arrears and current; or the obligor enters into a payment agreement with CSRU; or the obligor meets one of the criteria for exemption specified at subrules 98.102(1), 98.102(2), and 98.102(4); or the individual complies with the subpoena or warrant.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code chapter 252J.

441—98.108 to 98.115 Reserved.

DIVISION IX
CONSUMER REPORTING AGENCIES

441—98.116(252B) Procedures for providing information to consumer reporting agencies. The child support recovery unit shall make information available to consumer reporting agencies regarding the amount of delinquent support owed by a responsible person only in cases where the delinquent support exceeds \$1,000. However, before the unit will release the information to a consumer reporting

agency, the agency must meet the requirements for a nationwide consumer reporting agency under Iowa Code section 252B.9(3)“j.”

98.116(1) Request of information. Agencies may request the information from the Bureau of Collections, Department of Human Services, 400 SW Eighth Street, Suite H, Des Moines, Iowa 50309-4691. Requests for information about an individual shall include the individual’s name and identifying information such as a social security number or birth date. Agencies may also request a listing of all obligors owing support in excess of \$1,000.

98.116(2) Notice of proposed release of information. A notice of proposed release of information shall be sent to the last-known address of the responsible person 30 calendar days prior to the release of the support arrearage information to a consumer reporting agency. This notice shall explain the information to be released and the methods available for contesting the accuracy of the information.

98.116(3) Contesting proposed release of information. The responsible person may, within 15 calendar days of the date of the notice of proposed release of information, request a conference with the child support recovery officer to contest the accuracy of the information to be given to the consumer reporting agency. In contested cases no referral shall be made to the consumer reporting agency until after the amount of overdue support has been confirmed to exceed \$1,000.

This rule is intended to implement Iowa Code section 252B.9(3).
[ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—98.117 to 98.120 Reserved.

DIVISION X
EXTERNAL ENFORCEMENT

PREAMBLE

This division implements provisions of Iowa Code chapter 252B, which provides for enforcement of child support arrearages by external sources. These sources are entities under contract to collect difficult-to-collect arrearages and private attorneys acting independently of the unit but with the unit’s consent. The rules provide criteria and procedures for referral of delinquent support to collection contractors, assessment of the statutory surcharge, and opportunity for the delinquent parent to contest. The rules also provide a procedure to allow state payment to private attorneys enforcing child support recovery unit (CSRU) cases and provide criteria to exempt cases from the procedure.

[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.121(252B) Difficult-to-collect arrearages. The child support recovery unit may refer difficult-to-collect arrearages to a collection entity under contract with the unit or with another state entity. Upon referral, a surcharge, in addition to the support, shall be due and payable by the obligor as provided in Iowa Code chapter 252B.

98.121(1) Difficult-to-collect arrearage. A difficult-to-collect arrearage is one based upon a court or administrative order which meets all the following criteria:

- a. There is no order for current support and only an arrearage is owing.
- b. There has been no payment, except for federal or state tax refund offset payments, in the past three months.
- c. There is no valid reason for exemption from the referral and surcharge process. Valid reasons for exemption and acceptable verification are those listed in subrules 98.102(1), 98.102(3), and 98.102(6). Upon verification of those conditions, the child support recovery unit shall bypass or exempt the obligor’s arrearages from the referral and surcharge process. When the information to verify the exemption is not available to the child support recovery unit through online sources, the child support recovery unit shall request, and the obligor shall provide, verification of the reason for exemption.

98.121(2) Notice of the possibility of referral and surcharge. The child support recovery unit shall provide notice of the possibility of a referral and surcharge to the obligor as required by Iowa Code

chapter 252B. The notice shall be provided at least 15 days before the unit sends the notice of referral and surcharge to the obligor, subject to the following:

a. Notification contained in order. When the support order under which the arrearage has accrued contains language advising of statutory provisions for referral and surcharge, no other preliminary notice shall be required.

b. Notification issued by the child support recovery unit. When the support order under which the arrearage has accrued does not contain language regarding the statutory provisions for referral and surcharge, or was entered under a foreign jurisdiction and notification was not included in the support order or provided as a separate written notice, the child support recovery unit shall issue a notice to the obligor. The notice shall be sent by regular mail to the obligor's last-known address.

98.121(3) Notice of referral and surcharge. The child support recovery unit shall send notice of a referral and surcharge to the obligor by regular mail to the obligor's last-known address, with proof of service completed according to Rule of Civil Procedure 1.442. The notice shall contain all the information required by Iowa Code chapter 252B. The notice shall be sent at least 30 days before the unit refers the arrearage to the collection entity.

98.121(4) Contesting the referral and surcharge. An obligor may contest the referral and surcharge. The right to contest is limited to a mistake of fact including but not limited to a mistake in the identity of the obligor, a mistake as to whether there was a payment in the three months before the date of the notice specified in subrule 98.121(3), a mistake as to whether an exemption in paragraph 98.121(1) "c" applies, or a mistake in the amount of arrearages.

a. An obligor may contest the referral and surcharge by submitting a written request for a review to the unit within 20 days of the date on the notice of referral and surcharge specified in subrule 98.121(3). Upon receipt of a written request for review, the unit shall follow the criteria and procedures specified in Iowa Code chapter 252B for resolving the request.

(1) If the unit determines there is a mistake in the identity of the obligor, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.121(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, the unit shall issue a written notice to the contestant or obligor of the determination and not refer the arrearages. If the unit later determines an arrearage may be subject to referral, it shall issue a new notice as provided in subrule 98.121(3).

(2) If the unit determines there was a mistake in the amount of arrearages, but the corrected amount of arrearages will still be referred, or if the unit determines there is no mistake of fact, the unit shall issue a written notice of the determination of the review to the obligor by regular mail to the last-known address of the obligor. The notice shall include the amount of the arrearages that will be referred and the surcharge which will be assessed. The notice shall also include information on requesting an additional review by the bureau chief, and on requesting a judicial hearing. For purposes of this rule, bureau chief shall mean "bureau chief" as defined in rule 441—95.1(252B).

b. An obligor may contest the notice of determination of review by submitting a written request for an additional review by the bureau chief within 20 days of the date of the notice of determination of the review issued under paragraph "a." Upon receipt of the written request for additional review, the bureau chief shall review the facts of the case.

(1) If the bureau chief determines a mistake in the identity of the obligor has occurred, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.121(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, the bureau chief shall issue a written notice to the contestant or obligor of the determination and the arrearages shall not be referred. If the unit later determines an arrearage may be subject to referral, it shall issue a new notice as provided in subrule 98.121(3).

(2) If the bureau chief determines that there was a mistake in the amount of the arrearage but the corrected amount of arrearages will still be referred, or if there is no mistake of fact, the bureau chief shall send a written notice of the additional review determination to the obligor by regular mail to the last-known address of the obligor. The notice shall include the amount of the arrearage that will be

referred and the surcharge which will be assessed. The notice shall also include information on requesting a judicial hearing.

c. Following the issuance of a notice of determination of a review under paragraph 98.121(4)“*a*,” or issuance of a notice of determination of an additional review under paragraph 98.121(4)“*b*,” the obligor may request a district court hearing. The obligor shall make a request by sending a written request for a hearing to the unit within ten days of the date of the unit’s written determination of the review, or within ten days of the date of the bureau chief’s written determination of an additional review, whichever is later. Procedures for a district court hearing are specified in Iowa Code chapter 252B.

d. The unit shall not refer arrearages and assess a surcharge until after completion of any review, additional review or judicial hearing process.

98.121(5) Referral and surcharge.

a. If the obligor has not paid the arrearage, has not contested the referral, or if, following the unit’s review, the bureau chief’s additional review, and any judicial hearing, the unit, bureau chief, or court does not find a mistake of fact, the arrearage shall be referred to the collection entity.

b. The amount of the arrearage referred shall be the amount that is unpaid as of the date of the referral. The amount of the surcharge shall be an amount equal to the amount of the arrearage unpaid as of the date of the referral, multiplied by the percentage specified in the contract with the collection entity.

c. The child support recovery unit shall file a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed.

This rule is intended to implement Iowa Code chapter 252B.

[ARC 4576C, IAB 7/31/19, effective 9/4/19; ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.122(252B) Enforcement services by private attorney entitled to state compensation. An attorney licensed to practice law in Iowa may utilize judicial proceedings to collect support, at least a portion of which is assigned support, and be entitled to compensation by the state as provided in Iowa Code chapter 252B.

98.122(1) Eligible cases. To be eligible for attorney services with compensation under this rule, a case must meet all of the following:

a. The child support recovery unit is providing services under Iowa Code chapter 252B.

b. The current support obligation is terminated and only arrearages are due under the administrative or court order.

c. There has been no payment under any order in the case for at least a 12-month period prior to the provision of the notice from the attorney to the unit under paragraph 98.122(1)“*f*.”

d. At least a portion of the arrearages due under any order in the case is assigned to the state because cash assistance was paid under Iowa Code chapter 252B.

e. The case does not have any of the following characteristics:

(1) There has been a finding of good cause or other exception pursuant to Iowa Code section 252B.3.

(2) A portion of the arrears is assigned to another state because of public assistance provided by that state.

(3) Another attorney has already notified the unit of the intent to initiate a judicial proceeding to collect support due under any order in the same case under this rule, and either the time to receive the collection has not expired or the unit has not received a notice from the other attorney that the judicial proceeding has concluded prior to the expiration of the time period.

(4) If the notice from the attorney under paragraph 98.122(1)“*f*” specifies contempt of court as the judicial proceeding, and the unit has generated a seek employment order to the obligor under Iowa Code section 252B.21 less than nine months prior to the date on the notice from the attorney.

(5) The case or arrearages have been referred by the child support recovery unit to a collection entity under Iowa Code section 252B.5(3) less than nine months prior to the date on the notice from the attorney.

(6) The obligor has filed for bankruptcy and collection activities are stayed.

(7) The notice from the attorney under paragraph 98.122(1) “f” lists a specific judicial proceeding and the unit has already initiated the same type of proceeding in court.

(8) The case has been referred to the U.S. Attorney’s office and is still pending at that office.

f. The attorney has provided written notice to the central office of the child support recovery unit in Des Moines, as specified in subrule 98.122(2), and to the last-known address of the obligee of the intent to initiate a specified judicial proceeding to collect support on any identified court or administrative order involving the obligor and obligee in the case.

g. The attorney has provided documentation of insurance to the unit as required by Iowa Code chapter 252B.

h. The collection must be received by the collection services center within 90 days of the notice from the attorney in paragraph 98.122(1) “f,” or within a subsequent 90-day extension period.

98.122(2) Procedure.

a. To begin the process under this rule, the attorney shall submit the following to the External Services Process Specialist, Bureau of Collections, Iowa Department of Human Services, Hoover Building, Fifth Floor, Des Moines, Iowa 50319-0114 at least 30 days prior to initiating the specified judicial proceeding:

(1) A dated, written statement which lists the specific judicial proceeding which the attorney intends to initiate, any court or administrative order under which the arrearages accrued identified by the order number, and the names of the obligor and obligee.

(2) Documentation that the attorney is insured as required by the statute. Documentation shall be either a copy of the attorney’s policy from the insurer, or a letter from the insurer verifying insurance coverage as required by the statute.

(3) Documentation that the attorney is licensed to practice law in Iowa.

b. The unit shall mail a response to the attorney within ten days of receipt of the notice from the attorney. All of the following shall apply to the unit’s response:

(1) If the case meets the requirements of this rule, the notice shall list the case number, any order numbers, the judicial proceeding specified by the attorney, the balance due the state of Iowa, the balance due an obligee, and the date that is 90 days from the date of the notice from the attorney. The notice shall also contain a statement that any compensation due the attorney as a result of application of this rule will be calculated on the amount of support credited to arrearages due the state at the time the support paid as a result of the judicial proceeding is received by the collection services center. The notice shall also contain a statement that any support collected shall be disbursed in accordance with federal requirements, and any support due the obligee shall be disbursed to the obligee prior to disbursement to the attorney as compensation.

(2) If the case does not meet the requirements of this rule, the notice shall list the case number, any order number, and the reason the case does not meet the requirements.

c. If the case is eligible under this rule, the attorney may initiate judicial proceedings after 30 days after providing the notice to the child support recovery unit in paragraph 98.122(2) “a.” Iowa Code chapter 252B defines “judicial proceedings.”

d. The attorney may extend the time to complete the judicial proceeding or to allow for receipt of the collection by the collection services center by submitting a notice requesting a 90-day extension to the address in paragraph “a.” This or any subsequent notice must be received by the unit before expiration of the current 90-day time frame. The child support recovery unit shall acknowledge receipt of the subsequent notice and list on the acknowledgment the date that is 90 days from the date of the attorney’s subsequent notice.

98.122(3) Collection and payment to attorney.

a. Upon compliance with the requirements of Iowa Code chapter 252B and this rule, the attorney shall be entitled to compensation from the state as provided for in this rule.

b. Upon receipt of a file-stamped copy of a court order which identifies the amount of support collected as a result of the judicial proceeding and which does not order the payment of attorney fees by the obligor, and the receipt of the collection by the collection services center, all the following apply:

(1) Iowa Code chapter 252B specifies the formula to calculate the compensation due the attorney from the state. The child support recovery unit shall calculate the compensation due the attorney based upon the amount of support which is credited to arrearages due the state at the time the collection is received by the collection services center. After calculating the amount due the attorney, the unit shall reduce the amount due the attorney by the amount of any penalty or sanction imposed upon the state as a result of any other judicial proceeding initiated by that attorney under Iowa Code chapter 252B. The child support recovery unit shall send the attorney a notice of the amount of the compensation due from the state.

(2) The collection services center shall disburse any support due an obligee prior to payment of compensation to the attorney.

(3) The child support recovery unit shall not authorize disbursement of compensation to the attorney until the later of 30 days after receipt of the collection and the file-stamped copy of the order, or resolution of any timely appeal by the obligor or obligee.

(4) The amount of compensation due the attorney is subject to judicial review upon application to the court by the attorney.

This rule is intended to implement Iowa Code chapter 252B.
[ARC 6855C, IAB 2/8/23, effective 4/1/23]

441—98.123 to 98.130 Reserved

DIVISION XI
APPEALS

441—98.131(17A) Right of appeal.

98.131(1) Under this chapter, an administrative appeal pursuant to 441—Chapter 7 shall be limited to the following issues:

a. A claim or offset is contested as provided in subrule 98.82(3), 98.83(3), or 98.84(8) by a person's alleging a mistake of fact.

b. A name has been certified for passport sanction as provided in Iowa Code section 252B.5.

98.131(2) A hearing shall not be granted under 441—Chapter 7 when the appellant has a complaint about child support recovery enforcement matters other than those described in this rule.

This rule is intended to implement Iowa Code chapter 17A.
[ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—98.132(17A) Appeal record. The record in an administrative appeal under this rule shall include, in addition to those materials specified in Iowa Code section 17A.12(6), the notice of appeal, all evidence received or considered and all other submissions, including the verbatim record of the hearing.

This rule is intended to implement Iowa Code chapter 17A.
[ARC 5417C, IAB 2/10/21, effective 4/1/21]

These rules are intended to implement Iowa Code section 96.3 and chapter 252D.

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¹See 2005 Iowa Acts, Senate File 350, section 20.

²See 2007 Iowa Acts, chapter 218, sections 186 and 187, and 2008 Iowa Acts, chapter 1019, section 18 (rule nullified effective July 1, 2009).

CHAPTER 99
SUPPORT ESTABLISHMENT AND ADJUSTMENT SERVICES

PREAMBLE

This chapter contains rules governing the provision of services by the child support recovery unit regarding: the establishment of paternity; the establishment of support obligations in accordance with the mandatory guidelines set by the Iowa Supreme Court; the review and adjustment of support obligations; the modification of support obligations; and the suspension and reinstatement of support obligations. The rules in this chapter pertain only to administrative actions or procedures used by the unit in providing the services identified. This chapter shall not be interpreted to limit the unit's authority to use other means as provided for by state or federal statute, including, but not limited to, judicial procedures in providing these services.

DIVISION I
CHILD SUPPORT GUIDELINES

441—99.1(234,252B,252H) Income considered. The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the Iowa Supreme Court. Spousal support shall be considered as specified in the Iowa Supreme Court guidelines, and prior obligation spousal support actually paid or received shall be calculated in the same manner as the deductions for support in subrule 99.2(4). These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in Iowa Code chapter 252H, subchapter IV.

99.1(1) Exempt income. The following income of the parent is exempt in the establishment or modification of support:

- a. Income received by the parent under the family investment program (FIP).
- b. Income or other benefits derived from public assistance programs funded by a federal, state, or local governmental agency or entity that are listed in rule 441—41.27(239B) as exempt from consideration in determining eligibility under FIP.
- c. Income such as child support, social security dependent benefits received by a parent for a child because of the other parent's disability, and veteran's dependent benefits received by a parent on behalf of a child.
- d. Stepparent's income.
- e. Income of a guardian who is not the child's parent.
- f. Income of the child's siblings.
- g. Earned income tax credit.

99.1(2) Determining income. Any of the following may be used in determining a parent's income for establishing or modifying a support obligation:

- a. Income reported by the parent in a financial statement.
- b. Income established by any of the following:
 - (1) Income verified by an employer or other source of income.
 - (2) Income reported to the department of workforce development.
 - (3) For a public assistance recipient, income reported to the department of human services caseworker assigned to the public assistance case.
 - (4) Other written documentation that identifies income.
- c. Income as determined through occupational wage rate information published by the Iowa workforce development department or other state or federal agencies.
- d. The median income for parents on the CSRU caseload, calculated annually.
- e. Social security dependent benefits. Social security dependent benefits paid for a child because of a parent's disability shall be included in the disabled parent's income. Social security dependent

benefits paid for a parent due to the other parent's disability shall be included in the receiving parent's income.

99.1(3) *Verification of income.* Verification of income and allowable deductions from each parent shall be requested.

a. Verification of income may include, but is not limited to, the following:

- (1) Federal and state income tax returns.
- (2) W-2 statements.
- (3) Pay stubs.
- (4) Signed statements from an employer or other source of income.
- (5) Self-employment bookkeeping records.
- (6) Award letters confirming entitlement to benefits under a program administered by a government

or private agency such as social security, veterans' or unemployment benefits, military or civil service retirement or pension plans, or workers' compensation.

b. Cases in which the information or verification provided by a parent is questionable or inconsistent with other circumstances of the case may be investigated. If the investigation does not reveal any inconsistencies, the financial statement and other documentation provided by the parent shall be used to establish income.

c. If discrepancies exist in the financial statement provided by the parent and additional income information is not available, the child support recovery unit may:

- (1) Request a hearing before the court if attempting to establish a support order through administrative process.
- (2) Conduct discovery if a parent places the matter before the court by answering a petition or requesting a hearing before the court.
- (3) When attempting to establish a default order, provide the court with a copy of the parent's financial information and the reasons the information may be questionable.

d. If the child support recovery unit is unable to obtain verification of a parent's income, the financial statement provided by the parent may be used to establish support.

99.1(4) *Use of occupational wage rate information or median income for parents on the CSRU caseload.* CSRU shall use occupational wage rate information or median income for parents on the CSRU caseload to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent's most recent residential address is in Iowa, CSRU shall use Iowa workforce development regional data to determine income. If a parent's most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent's most recent residence to determine income. For all other cases, CSRU shall use Iowa statewide occupational wage rate or median income for parents on the CSRU caseload to determine income.

a. Occupation known. When CSRU can reasonably ascertain the current or last-known occupation of a parent, CSRU shall use occupational wage rate information to determine income. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. Occupation unknown. When CSRU cannot reasonably ascertain the current or last-known occupation of a parent, CSRU shall determine the income of a parent using the median income amount for parents on the CSRU caseload, based upon the parent's most recent residential address.

99.1(5) *Self-employment income.* A self-employed parent's adjusted gross income, rather than the net taxable income, shall be used in determining net income. The adjusted gross income shall be computed by deducting business expenses involving actual cash expenditures that affect the actual dollar income of the parent.

a. A person is self-employed when the person:

- (1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.
- (2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service (IRS).

b. In calculating net income from self-employment, the child support recovery unit shall deduct only those items allowed by the child support guidelines. Amounts from a prior period claimed as net losses shall not be allowed as deductions.

c. Net profits from self-employment may be determined through a review of self-employment bookkeeping records, sales and expenditure records, quarterly reports filed with the IRS, previous year's federal or state income tax returns, or other documentation. The parent shall provide records of bookkeeping, sales, and expenditures for the most recent 12-month period or, if the self-employment is less than 12 months old, for the period since the self-employment began.

99.1(6) *Fluctuating income.* A person has a fluctuating income when the calculated gross income or the adjusted gross income, as defined in subrule 99.1(5), for the current year varies from the gross or adjusted gross income of the previous year by more than 20 percent.

a. If requested, the child support recovery unit shall average the income of a person whose income fluctuated because the nature of the person's occupation is of a type that normally experiences fluctuations in income.

b. In determining a person's average income, the following procedures shall be used:

(1) For non-self-employed persons, the child support recovery unit shall estimate the gross income for the current year and add the amount to the gross income from relevant years that would accurately depict fluctuations in the person's income. The unit shall divide this sum by the number of years added, prior and current, to arrive at an average gross annual income. The unit shall divide the average gross annual income by 12 to arrive at the person's average gross monthly income.

(2) For income from self-employment, the child support recovery unit shall compute the adjusted gross annual income as defined in subrule 99.1(5) for the relevant years that would accurately depict fluctuations in the person's income. The unit shall use the adjusted gross annual income to compute the average adjusted gross monthly income in the same manner as the computation of average gross monthly income in 99.1(6) "b"(1).

[ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.2(234,252B) Allowable deductions. The deductions specified in the Iowa Supreme Court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:

99.2(1) Federal and state income tax.

a. The child support recovery unit shall calculate the amount of the deduction for federal and state income tax as specified in the Iowa Supreme Court guidelines.

b. The unit shall calculate the amount of the deduction for self-employed persons with fluctuating incomes, as defined in subrule 99.1(6), by computing the person's averaged income and applying the method of calculating a tax deduction as required by Iowa Supreme Court guidelines.

99.2(2) Social security and Medicare tax deductions, mandatory pensions, and union dues as specified in the Iowa Supreme Court guidelines.

99.2(3) Mandatory occupational license fees as specified in the Iowa Supreme Court guidelines.

99.2(4) Actual payments of child support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

a. In establishing prior support payments, the child support recovery unit shall verify payments made for the 12 months preceding the month in which the amount of support for the new order is determined. If the support obligation is less than one year old, the child support recovery unit shall verify each monthly payment since the beginning of the obligation.

b. If the obligation is one year old or older, the child support recovery unit shall add together all verified amounts paid during the past 12 months up to the total of the current support obligation that accrued during this 12-month period, and divide by 12. All amounts collected shall be included, regardless of the source.

c. If the support obligation is less than one year old, the child support recovery unit shall add together the verified amounts paid since the obligation began up to the total of the current support obligation that accrued during this period, and divide by the number of months that the obligation has existed.

d. When a parent has more than one prior support order, the child support recovery unit shall calculate the allowable deduction for each obligation separately, and then add the amounts together to determine the parent's total allowable deduction.

99.2(5) Health insurance premium costs for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. Health insurance premium costs shall be verified before being allowed as a deduction.

99.2(6) Actual child care expenses as specified in the Iowa Supreme Court guidelines. The child support recovery unit shall determine the amount of the child care deduction as follows:

a. Actual child care expenses shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

b. Only the amount of reported child care expenses in excess of the amount allowed as "credit for child and dependent care expenses" for federal income tax purposes shall be allowed as a deduction in determining the custodial parent's net income.

c. In determining the deduction allowed to the custodial parent for child care expenses, the following procedures shall be used:

(1) If the custodial parent provides a copy of a federal income tax return for the current tax processing year and the amount is consistent with the current financial circumstances of the parent, the child support recovery unit shall use the amount reported as "credit for child and dependent care expenses."

(2) If income tax information is not available, or if the parent indicates or there is reason to believe that the amount stated in the return is no longer representative of the parent's financial conditions or child care expenses, the child support recovery unit shall determine the allowable deduction for child care expenses for federal income tax purposes using the custodial parent's income only.

d. The child support recovery unit shall compute the child care deduction as follows:

(1) Divide the amount of child care expense the parent may claim as a deduction for federal income tax purposes by 12 to arrive at a monthly amount.

(2) If the child care expense reported on the financial statement is not a monthly amount, convert the reported amount to an equivalent monthly figure and round the figure to two decimal places.

(3) Subtract the amount the parent may claim as "credit for child and dependent care expenses" for federal income tax from the amount of child care expenses reported on the financial statement. The difference is the amount allowed for a deduction in determining income for child support.

99.2(7) Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the Iowa Supreme Court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

a. The deduction for qualified additional dependents may be used:

(1) For dependents of the custodial or noncustodial father or mother, whether in or out of the parent's home. The father may establish the deduction by providing written verification of a legal obligation to the children through one of the actions enumerated in the guidelines. The mother may establish the deduction by providing written verification of a legal obligation to the children, including the mother's statement.

(2) In the establishment of original orders.

(3) In the modification of existing orders. The deduction may be used in an upward modification. The deduction cannot be used to affect the threshold determination of eligibility for a downward modification, but may be used after the threshold determination is met.

b. Reserved.

99.2(8) Cash medical support, either ordered in the pending matter or for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. All cash medical support payments for other children, not in the pending matter, shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.3(234,252B) Determining net income. Unless otherwise specified in these rules, the child support recovery unit shall determine net income as prescribed by the Iowa Supreme Court guidelines.

99.3(1) *Calculating net income.* All includable income and allowable deductions shall be expressed in monthly amounts. Income and corresponding deductions received at a frequency other than monthly shall be converted to equivalent monthly amounts by multiplying the income and corresponding deductions received on a weekly basis by 4.33, on a biweekly basis by 2.17, and on a semimonthly basis by 2.

99.3(2) *Estimating net income.*

a. The estimated net income of a parent shall be 80 percent of the reported income or the estimated income as determined from occupational wage rate information or derived from the median income of parents on the CSRU caseload, as appropriate, minus the deductions enumerated in subrules 99.2(3) to 99.2(8) when the information to calculate these deductions is readily available through automated or other sources.

b. The net income of a parent shall be estimated under the following conditions:

(1) Gross earned income information was obtained from a source that did not provide itemized deductions allowed by the mandatory support guidelines.

(2) Occupational wage rate information or median income of parents on the CSRU caseload was used to determine a parent's income.

[ARC 1357C, IAB 3/5/14, effective 5/1/14]

441—99.4(234,252B) Applying the guidelines.

99.4(1) *Applying the guidelines.* The child support recovery unit shall use the child support guidelines schedule as prescribed by the Iowa Supreme Court only for the number of children for whom support is being sought sharing the same two legal parents.

EXCEPTION: For foster care recovery cases, the guidelines schedule shall be used as set forth in subrule 99.5(4).

99.4(2) *Establishing current support.*

a. Calculation. The child support recovery unit shall calculate the amount of support as prescribed by the Iowa Supreme Court guidelines. Round amount of support to the nearest whole dollar.

b. Additional factors.

(1) In all cases other than foster care, CSRU shall establish current support payable in monthly frequencies.

(2) In foster care cases, CSRU may establish current support payable in monthly or weekly frequencies. To establish a weekly amount, CSRU shall divide the figure in paragraph 99.4(2) "a" by 4.33 and round to the nearest whole dollar.

(3) If the court orders joint (equally shared) physical care of a child or split or divided physical care of multiple children, the unit shall calculate current support according to the Iowa Supreme Court guidelines for each parent assuming the other is the custodial parent. If a child begins receiving family investment program (FIP) benefits or if foster care funds are expended, an offset of the two amounts as a method of payment shall be disallowed.

(4) The amount of support shall be zero if the noncustodial parent's only income is Supplemental Security Income paid pursuant to 42 U.S.C. 1381a.

99.4(3) *Establishing accrued support debt amount.*

a. Support debt created. The payment of public assistance to or for the benefit of a dependent child or a dependent child's caretaker creates an accrued support debt due and owing by the child's parent to the department. The amount of the accrued support debt is based on the period of time public assistance payment or foster care funds were expended, but is not created for the period of receipt of public assistance on the parent's own behalf for the benefit of the dependent child or the child's caretaker.

b. Calculating accrued support debt. CSRU shall calculate the accrued support debt as follows:

(1) For Family Investment Program (FIP) benefits, CSRU shall use the period for which FIP was paid during the 36 months preceding the date the notice of support debt is prepared or the date the petition is filed. For foster care assistance, CSRU shall use the three-month period for which foster care assistance was paid prior to the date the initial notice to the noncustodial parent of the amount of support obligation is prepared, or the date a written request for a court hearing is received, whichever is earlier.

(2) CSRU shall exclude periods the noncustodial parent received public assistance as a part of this eligible group.

(3) CSRU may extend the period to include any additional periods public assistance is expended prior to the entry of the order.

(4) CSRU shall calculate the amount of the obligation by using the current net income of both parents, the guidelines in effect at the time the order is entered, and the number of children of the noncustodial parent who were receiving public assistance for each month for which accrued support is sought.

(5) CSRU shall calculate the total amount of the FIP support debt by multiplying the number of months for which assistance was paid times the determined guidelines amount.

(6) CSRU may calculate the total amount of the foster care support debt by multiplying the number of months for which assistance was paid times the determined guidelines amount and shall adjust this amount for weeks in which no foster care benefits were paid.

c. Establishing the accrued support repayment amount.

(1) In cases other than foster care, CSRU shall establish the repayment amount as follows:

1. When there is an ongoing obligation, the monthly repayment amount shall be 10 percent of the ongoing amount unless the noncustodial parent agrees to a higher amount.

2. When the order does not include ongoing support, the monthly repayment amount shall be the same as the amount for ongoing support which would have been due if such an obligation had been established. However, when all of the children for whom accrued support debt is sought are residing with the noncustodial parent, the monthly repayment amount shall be set at 10 percent of this amount.

(2) In foster care cases, CSRU shall establish the repayment amount in the same manner as subparagraph (1), but may establish weekly amounts and if the order does not include ongoing support, the repayment amount shall be set at 10 percent of the amount for ongoing support which would have been due if such an obligation had been established.

99.4(4) *Children in nonparental homes or foster care.* The parents of a child in a nonparental home or in foster care are severally liable for the support of the child. A support obligation shall be established separately for each parent.

a. Parents' location known. When the location is known for both parents having a legal obligation to provide support for their children, the income of both parents shall be used to determine the amount of ongoing support in accordance with the child support guidelines.

(1) Calculating support amount. There shall be a separate calculation of each parent's child support amount, regardless of whether the parents are married and living together, or living separately. Each calculation shall assume that the parent for whom support is being calculated is the noncustodial parent and the other parent is the custodial parent.

(2) Prior orders. If only one parent is paying support under a prior order for the children for whom support is being calculated, the amount of support paid shall not be deducted from that parent's net monthly income in computing the support amount for the other parent.

b. One parent's location unknown. When the location of one parent is not known, procedures shall be initiated to establish a support order against the parent whose location is known in accordance with the mandatory support guidelines as follows:

(1) The parent whose location is known shall be considered the noncustodial parent and that parent's income shall be used to calculate child support.

(2) The income of the parent whose location is unknown shall be determined by using the estimated median income for parents on the CSRU caseload and that parent shall be considered the custodial parent in calculating child support.

c. When one parent is deceased or has had parental rights terminated, the method used to calculate support when one parent's location is not known shall be used. The parent who is deceased or has had parental rights terminated shall be considered the custodial parent with zero income.

99.4(5) *Adjustment for extraordinary visitation or parenting time.* CSRU shall calculate an extraordinary visitation or parenting time credit as specified in the Iowa Supreme Court guidelines. The credit shall not reduce the child support below the amount required by the Iowa Supreme Court guidelines.

The extraordinary visitation adjustment or parenting time credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation or parenting time in excess of 127 overnights per year on an annual basis for the child for whom support is sought. The order granting visitation or parenting time can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation or parenting time, there is another order that meets the criteria.

b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.

c. The court has not ordered equally shared physical care.

99.4(6) *Establishing medical support.* The child support recovery unit shall calculate medical support as required by Iowa Code chapter 252E and the Iowa Supreme Court guidelines. The cost of the health insurance premium for the child is added to the basic support obligation and prorated between the parents as provided in the Iowa Supreme Court guidelines, and the parent ordered to provide health insurance must provide verification of this expense or anticipated expense.

[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.5(234,252B) Deviation from guidelines.

99.5(1) *Criteria for deviation.* The court shall not vary from the amount of child support that would result from application of the guidelines without a written finding as required by the Iowa Supreme Court guidelines.

99.5(2) *Supporting financial and legal documentation.*

a. The party requesting a deviation from the guidelines shall provide supporting documentation. The supporting documentation shall include an itemized list identifying the amount and nature of each adjustment requested. Failure to provide supporting documentation for a request for deviation shall result in a denial of the request.

b. Legal documents prepared for the court's approval, such as stipulations and orders for support, shall include language to identify the following:

(1) The amount of support calculated under the guidelines without allowance for deviations.

(2) The reasons for deviating from the guidelines.

(3) The amount of support calculated after allowing for the deviation.

99.5(3) *Depreciation.* A parent may request a deduction for depreciation of machinery, equipment, or other property used to earn income. Straight-line depreciation shall be the only type of depreciation that shall be allowed as a deduction. The child support recovery unit shall allow the straight-line depreciation amount as a deduction if the parent provides documentation from a tax preparer verifying the amount of straight-line depreciation being claimed. Straight-line depreciation is computed by deducting the property's estimated salvage value from the cost of the property, and deducting that figure in equal yearly amounts over the period of the property's remaining estimated useful life.

99.5(4) *Foster care case.* In a foster care case, the child support recovery unit may deviate from the guidelines by applying a 30 percent flat rate deduction for parents who provide financial documentation.

The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances or other circumstances contemplated in Iowa Code section 234.39.

CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows: The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines as provided in rule 441—99.2(234,252B) and by using the guidelines schedule corresponding to the sum of the children in the home for whom the parent has a legal obligation and the children in foster care. The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.

99.5(5) *Negotiation of accrued support debt.* The child support recovery unit may negotiate with a parent to establish the amount of accrued support debt owed to the department. In negotiating accrued support, the state does not represent the custodial parent. The custodial parent may intervene at any time prior to the filing of the order to contest the amount of the debt or request the entry of a judgment in the parent's behalf which may otherwise be relinquished through negotiation or entry of a judgment.

[ARC 1357C, IAB 3/5/14, effective 5/1/14]

These rules are intended to implement Iowa Code sections 234.39, 252B.3, 252B.5, 252B.7A, and 598.21(4).

441—99.6 to 99.9 Reserved.

DIVISION II
PATERNITY ESTABLISHMENT
PART A
JUDICIAL PATERNITY ESTABLISHMENT

441—99.10(252A) Temporary support. If a court ordered a putative father to pay temporary support before entering an order making a final determination of paternity under Iowa Code section 252A.6A, but then the court determines that the putative father is not the legal father and enters an order terminating the temporary support, all the following apply.

99.10(1) *Satisfaction of accrued support.* Upon receipt of a file-stamped copy of the order terminating the support order, the child support recovery unit shall take the following action concerning unpaid support assigned to the department:

- a. The child support recovery unit shall satisfy only unpaid support assigned to the department.
- b. The child support recovery unit shall ask the obligee to sign the satisfaction acknowledging the obligee has no right to support owed the department and waive notice of hearing on a subsequent satisfaction order. If the obligee does not sign the satisfaction and waiver or notice, the child support recovery unit is not prevented from satisfying amounts due the department.
- c. The child support recovery unit shall prepare the required documents to satisfy any amounts owed the department and shall file them with the appropriate district court.

99.10(2) *Previously collected moneys.* The child support recovery unit shall not return any moneys previously paid on the temporary support judgment.

This rule is intended to implement Iowa Code section 252A.6A.

441—99.11 to 99.20 Reserved.

PART B
ADMINISTRATIVE PATERNITY ESTABLISHMENT

441—99.21(252F) When paternity may be established administratively. The child support recovery unit may seek to administratively establish paternity and accrued or accruing child support and medical support obligations against an alleged father when the conditions specified in Iowa Code chapter 252F are met.

441—99.22(252F) Mother’s certified statement. Before initiating an action under Iowa Code chapter 252F, the unit may obtain a signed Form 470-3877 or Form 470-3929 or a similar document from the child’s caretaker. The unit shall obtain Form 470-3293 from the child’s mother certifying, in accordance with Iowa Code section 622.1, that the man named is or may be the child’s biological father. Government records, including but not limited to an application for public assistance, that substantially meet the requirements of Iowa Code section 622.1 may also be used. In signing Form 470-3293, the mother acknowledges that the unit may initiate a paternity action against the alleged father. The mother shall sign and return Form 470-3293 to the unit within ten days of the date of the unit’s request.
[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.23(252F) Notice of alleged paternity and support debt. Following receipt of Form 470-3293 or government records, including but not limited to an application for public assistance, that substantially meet the requirements of Iowa Code section 622.1, the unit shall serve a notice of alleged paternity and support debt as provided in Iowa Code section 252F.3.
[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.24(252F) Conference to discuss paternity and support issues. A party may request a conference as provided in Iowa Code section 252F.3(1) with the office that issued the notice to discuss paternity establishment and the amount of support he may be required to pay.
[ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.25(252F) Amount of support obligation. The unit shall determine the amount of the child support obligation accrued and accruing using the child support guidelines established by the Iowa Supreme Court, and pursuant to the provisions of Iowa Code section 252B.7A.

441—99.26(252F) Court hearing. Rescinded ARC 5417C, IAB 2/10/21, effective 4/1/21.

441—99.27(252F) Paternity contested. The alleged father may contest the paternity establishment by submitting, within 20 calendar days after service of the notice upon him, as provided in rule 441—99.23(252F), a written statement contesting paternity to the address of the unit as set forth in the notice. The mother may contest paternity establishment by submitting, within 20 calendar days after the unit mailed her notice of the action or within 20 calendar days after the alleged father is served with the original notice, whichever is later, a written statement contesting paternity to the address of the unit as set forth in the notice. When paternity is contested, or at the unit’s initiative, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing. If the mother and child or children previously submitted blood or genetic specimens in a prior action to establish paternity against a different alleged father, the previously submitted specimens and prior results, if available, may be used for testing in this action.
[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.28(252F) Paternity test results challenge. Either party or the unit may challenge the results of the paternity test by filing a written notice with the district court within 20 calendar days after the unit issues or mails the paternity test results to the parties. When a party challenges the paternity test results, and requests an additional paternity test, the unit shall order an additional blood or genetic test, if the party requesting the additional test pays for the additional testing in advance. If the party challenges the first paternity test results, but does not request additional tests, the unit may order additional blood or genetic tests.

441—99.29(252F) Agreement to entry of paternity and support order. If the alleged father admits paternity and reaches agreement with the unit on the entry of an order for support, the father may acknowledge his consent on Form 470-4084. If the mother does not contest paternity within the allowed time period or if the mother waives the time period for contesting paternity, the unit may file the form,

if applicable, and Administrative Paternity Order with the court in accordance with Iowa Code section 252F.6.

[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.30(252F) Entry of order establishing paternity only. If a party requests a court hearing on support issues and paternity is not contested, or if paternity was contested but neither party filed a timely challenge of the paternity test results, the unit shall prepare an order establishing paternity and reserving the support issues for determination by the court. The unit shall present the order and other documents supporting the entry of the ex parte paternity-only order to the court for review and approval prior to the hearing on the support issues.

[ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.31(252F) Exception to time limit. The unit may accept and respond to written requests for court hearings beyond the time limits allowed in this part.

441—99.32(252F) Genetic test costs assessed.

99.32(1) Paternity established. If genetic testing of an alleged father is conducted and that man is established as the child's father, the unit shall assess the costs of the genetic testing to the father who denied paternity and enter an order for repayment of these costs.

99.32(2) Paternity not established. If genetic testing of an alleged father is conducted and that man is not established as the child's father, the costs of the genetic testing shall not be assessed to any of the parties.

99.32(3) Results contested. If the results of the genetic testing are timely challenged and the challenging party requests additional testing, the party contesting the results shall advance the cost of the additional testing. If the challenging party does not advance payment for the additional testing, the unit shall certify the case to district court.

These rules are intended to implement Iowa Code chapter 252F.

441—99.33 to 99.35 Reserved.

PART C
PATERNITY DISESTABLISHMENT

441—99.36(598,600B) Definitions.

“Disestablishment” means paternity which is legally overcome under the conditions specified in Iowa Code section 600B.41A or 598.21E.

“Nonrequesting parent” means a parent who is not filing a petition to overcome paternity.

“Requesting parent” means a parent who files a petition to overcome paternity.

[ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.37(598,600B) Communication between parents. When a parent who has filed a petition to disestablish paternity requests assistance from the child support recovery unit in contacting the other parent, the child support recovery unit shall take the following actions if services are being provided by the child support recovery unit, the location of the nonrequesting party is known, and the child support recovery unit has been provided a copy of the petition to disestablish paternity.

99.37(1) Written contact. The child support recovery unit shall send written notification to the nonrequesting parent of the requesting parent's desire to disestablish paternity and of the requesting parent's whereabouts. The notice shall state that the nonrequesting parent may cooperate in this action by filing a statement of the nonrequesting parent's current address or the name and address of the nonrequesting parent's attorney in the court file, or may contact the requesting parent with this information.

99.37(2) Notification of requesting parent. The child support recovery unit shall provide notification to the requesting party that contact was made with the nonrequesting party and that the nonrequesting parent may file a statement in the court file or may contact the requesting parent directly.

441—99.38(598,600B) Continuation of enforcement. The child support recovery unit shall continue all enforcement actions to collect current and accrued support as ordered until the unit receives a file-stamped copy of the order disestablishing paternity.

441—99.39(598,600B) Satisfaction of accrued support.

99.39(1) *Disestablishment orders entered before May 21, 1997.* Upon receipt of a file-stamped copy of an order disestablishing paternity which was entered before May 21, 1997, the child support recovery unit shall take the following action concerning unpaid support assigned to the department.

a. The child support recovery unit shall satisfy only unpaid support assigned to the department and only if:

(1) For actions under Iowa Code section 600B.41A, blood or genetic testing was done and a guardian ad litem was appointed for the child.

(2) For actions under Iowa Code section 598.21E, the written statement was filed and a guardian ad litem was appointed for the child.

b. The child support recovery unit shall ask the obligee to sign the satisfaction acknowledging the obligee has no right to support owed the department and waive notice of hearing on a subsequent satisfaction order. If the obligee does not sign the satisfaction and waiver of notice, the child support recovery unit is not prevented from satisfying amounts due the department.

c. The child support recovery unit shall prepare the required documents to satisfy any amounts owed the department and shall file them with the appropriate district court. If the court later determines that paternity was incorrectly disestablished, the child support recovery unit may attempt to reinstate and enforce the prior judgment.

99.39(2) *Disestablishment orders entered on or after May 21, 1997.* Upon receipt of a file-stamped copy of an order disestablishing paternity which was entered on or after May 21, 1997, the child support recovery unit shall take the following action concerning unpaid support:

a. If the order also contains a provision satisfying unpaid support, the unit shall adjust its records to show unpaid support is paid.

b. If the order does not contain a provision satisfying unpaid support, the unit shall satisfy only unpaid support assigned to the department. The unit shall notify the party who petitioned the court for disestablishment that this is the only support the unit can satisfy.

(1) The child support recovery unit shall ask the obligee to sign the satisfaction acknowledging the obligee has no right to support owed the department and waive notice of hearing on a subsequent satisfaction order. If the obligee does not sign the satisfaction and waiver notice, the child support recovery unit is not prevented from satisfying amounts due the department.

(2) The child support recovery unit shall prepare the required documents to satisfy any amounts owed the department and shall file them with the appropriate court. If the court later determines that paternity was incorrectly disestablished, the child support recovery unit may attempt to reinstate and enforce the prior judgment.

99.39(3) *Termination of paternity.* If the court entered an order dismissing a disestablishment of paternity action on or before May 21, 1997, this subrule applies. Upon receipt of a file-stamped copy of an order terminating paternity under the requirements of Iowa Code section 600B.41A, the child support recovery unit shall take the following action concerning unpaid support assigned to the department:

a. The child support recovery unit shall satisfy only unpaid support assigned to the department.

b. The child support recovery unit shall ask the obligee to sign the satisfaction acknowledging the obligee has no right to support owed the department and waive notice of hearing on a subsequent satisfaction order. If the obligee does not sign the satisfaction and waiver of notice, the child support recovery unit is not prevented from satisfying amounts due the department.

c. The child support recovery unit shall prepare the required documents to satisfy any amounts owed the department and shall file them with the appropriate district court. If the court later determines that paternity was incorrectly terminated, the child support recovery unit may attempt to reinstate and enforce the prior judgment.

99.39(4) *Previously collected moneys.* The child support recovery unit shall not return any moneys previously paid on the judgment.
[ARC 6856C, IAB 2/8/23, effective 4/1/23]

These rules are intended to implement Iowa Code section 598.21, subsection 4A, and Iowa Code section 600B.41A.

441—99.40 Reserved.

DIVISION III
ADMINISTRATIVE ESTABLISHMENT OF SUPPORT
[Prior to 9/1/93, see 441—95.11(252C)]

441—99.41(252C) Establishment of an administrative order.

99.41(1) *When order may be established.* The bureau chief may establish a child or medical support obligation against a responsible person through the administrative process. This does not preclude the child support recovery unit from pursuing the establishment of an ongoing support obligation through other available legal proceedings. When gathering information to establish a support order, the unit may obtain a signed Form 470-3877 or Form 470-3929 or a similar document from the child's caretaker.

99.41(2) *Support debt.* When public assistance is paid to or Medicaid is received by a child of the responsible person, or the dependent child's caretaker, a support debt is created and assigned to the department. When no public assistance is paid or Medicaid is received, the debt is owed to the individual caretaker.

99.41(3) *Notice to responsible person.* When the bureau chief establishes a support debt against a responsible person, a notice of child support debt shall be served in accordance with the Iowa Rules of Civil Procedure or Iowa Code section 252B.26. The notice shall include all of the rights and responsibilities shown in Iowa Code section 252C.3. The notice shall also inform the responsible person which of these rights may be waived pursuant to Iowa Code section 252C.12, and the procedures for and effect of waiving these rights. The notice shall include a statement that failure to respond within the time limits given and to provide information and verification of financial circumstances shall result in the entry of a default judgment for support.

99.41(4) *Negotiation conference.* The responsible person may, within ten calendar days after being served the notice of child support debt, request a negotiation conference with the office of the child support recovery unit which sent the notice.

99.41(5) *Amount of support obligation.* The child support recovery unit shall determine the amount of the child support obligation accrued and accruing using the child support guidelines established by the Iowa Supreme Court, and pursuant to the provisions of Iowa Code section 252B.7A.

a. Any deviation from the guidelines shall require a written finding by the bureau chief.

b. Reserved.

99.41(6) Reserved.

99.41(7) *Court hearing.* Either the responsible person or the child support recovery unit may request a court hearing regarding the establishment of a support obligation through the administrative process.

a. The request for a hearing by the responsible person shall be in writing and sent to the office of the child support recovery unit which sent the original notice of the support debt by the latest of the following:

(1) Thirty days from the date of service of the first notice of support debt.

(2) Ten days from the date of the negotiation conference.

(3) Thirty days from the date the second notice and finding of financial responsibility is issued.

(4) Ten days from the date of issuance of the conference report if the bureau chief does not issue a second notice and finding of financial responsibility after a conference was requested.

b. When a request for a court hearing is received from the responsible person, within the time limits allowed, or is made by the child support recovery unit, the bureau chief shall schedule or request that the hearing be scheduled in the district court in the county:

(1) Where the dependent child resides if the child resides in Iowa.

(2) Where the responsible person resides if the child for whom support is sought resides in another state or the sole purpose of the administrative order is to secure a judgment for the time period that public assistance was expended by the state on behalf of the family or child.

99.41(8) *Exception to time limit.* The bureau chief may accept and respond to written requests for a court hearing beyond the time limits allowed in this rule.

99.41(9) Entry of order. If no request for a hearing is received from the responsible person at the local office of the child support recovery unit, or made by the unit, the bureau chief may prepare an order for support and have it presented ex parte to the court for approval.

a. The attorney for the child support recovery unit shall present the order and other documents supporting the entry of the ex parte order to the court for review and approval. Pursuant to Iowa Code chapter 252C, the court shall approve the order unless defects appear in the order or supporting documents.

b. The bureau chief shall file a copy of the approved order with the clerk of the district court.

c. The bureau chief shall send a copy of the filed order by regular mail, to the caretaker's last-known address, to the responsible person's last-known address or the caretaker's or the responsible person's attorney pursuant to the provisions of Iowa Code chapter 252C within 14 days after approval and issuance of the order by the court.

99.41(10) Force and effect. Once the order has been signed by the judge and filed, it shall have all the force and effect of an order or decree entered by the court. Unless otherwise specified, the effective date of the support obligation shall be the twentieth day following the date the order is prepared by the unit.

99.41(11) Modification by bureau chief. The bureau chief may petition an appropriate court for modification of a court order on the same grounds as a party to the court order can petition the court for modification.

This rule is intended to implement Iowa Code chapter 252C.

[ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.42 to 99.60 Reserved.

DIVISION IV
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS
[Prior to 9/1/93, see 441—98.51(73GA,ch1244) to 98.60(73GA,ch1244)]

441—99.61(252B,252H) Definitions.

"Guidelines" means the most current guidelines and criteria prescribed by the Iowa Supreme Court for determining the amount of child support to be awarded.

"Parent" means a person who is a responsible person or a caretaker, as those terms are defined in rule 441—95.1(252B).

"Recipient of service" means a person receiving foster care services, or a recipient of family investment program assistance or Medicaid benefits whose child support or medical support is assigned, or a person who is not receiving public assistance but who is entitled to child support enforcement services pursuant to Iowa Code section 252B.4.

441—99.62(252B,252H) Review of permanent child support obligations. Permanent child support obligations that are ongoing and being enforced by the child support recovery unit or the child support agency of another state shall be reviewed by the unit to determine whether or not to adjust the obligation. The unit shall determine the appropriate obligation amount using the child support guidelines. Iowa must have continuing, exclusive jurisdiction to modify the order under Iowa Code chapter 252K.

99.62(1) Periodic review. A permanent child support obligation being enforced by the child support recovery unit and meeting the conditions in Iowa Code section 252H.12 may be reviewed upon the initiative of the unit if:

a. The right to any ongoing child support obligation is currently assigned to the state due to the receipt of public assistance.

b. The support order does not already contain medical support provisions.

c. A review is otherwise necessary to comply with state or federal law.

99.62(2) Review by request. A review shall be conducted upon the request of the child support recovery agency of another state or upon the written request of either parent subject to the order submitted on Form 470-2749. One review may be conducted every two years when the review is being conducted

at the request of either parent. The request for review may be no earlier than two years from the filing date of the support order or most recent modification or the last completed review, whichever is later.

99.62(3) Review outcome.

a. Procedures to adjust the support obligation shall be initiated only when the financial and other information available to the child support recovery unit indicates that the:

(1) Present child support obligation varies from the Iowa Supreme Court mandatory child support guidelines by more than 20 percent, and

(2) Variation is due to a change in financial circumstances which has lasted at least three months and can reasonably be expected to last for an additional three months.

b. Procedures to modify a support order may be initiated when the order does not include provisions for medical support.

[ARC 9352B, IAB 2/9/11, effective 4/1/11; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.63(252B,252H) Notice requirements. The child support recovery unit shall provide written notification to each parent affected by a permanent child support obligation being enforced by the child support recovery unit as follows:

99.63(1) Notice of right to request review. The child support recovery unit shall notify each parent of the right to request review of the order and the appropriate place and manner in which the request should be made. Notification shall be provided on Form 470-0188 or Form 470-1981 or through another printed or electronic format.

99.63(2) Notice of review. One of the following shall apply:

a. At least 15 days before the review is conducted, the child support recovery unit shall serve notice of its intent to review the order on each parent affected by the child support obligation. This notice shall include a request that the parties complete a financial statement and provide verification of income. The notice shall be served in accordance with Iowa Code section 252B.26 or 252H.15.

b. If the conditions of Iowa Code section 252H.14A(1) are met, the unit may conduct a review using information accessible to the unit without:

(1) Issuing a notice under paragraph 99.63(2) “a,” or

(2) Requesting additional information from the parent.

99.63(3) Notice of decision. After the child support recovery unit completes the review of the child support obligation in accordance with rule 441—99.62(252B,252H), the unit shall issue a notice of decision in accordance with Iowa Code section 252H.14A or 252H.16 stating whether or not an adjustment is appropriate and, if so, the unit’s intent to enter an administrative order for adjustment.

a. and *b.* Rescinded IAB 2/5/03, effective 4/1/03.

99.63(4) Challenges to outcome of review. Each parent shall be allowed to request a second review challenging the determination of the child support recovery unit. The procedure for challenging the determination is as follows:

a. The parent challenging the determination shall submit the request for a second review in writing to the child support recovery unit stating the reasons for the request and providing written evidence necessary to support the challenge. The request must be submitted:

(1) Within 10 days from the date of a notice of decision issued pursuant to Iowa Code section 252H.16, or

(2) Within 30 days from service of a notice of decision issued pursuant to Iowa Code section 252H.14A.

b. The child support recovery unit shall review the written evidence submitted with the request and all financial information available to the unit and make a determination of one of the following:

(1) Rescinded IAB 2/5/03, effective 4/1/03.

(2) To enter an administrative order for adjustment of the obligation.

(3) That adjustment of the child support obligation is inappropriate.

c. The unit shall send written notice of the outcome of the second review to each parent affected by the child support obligation at the parent’s last-known mailing address.

d. For a review initiated under Iowa Code section 252H.15, if either parent disputes the second decision, the objecting parent may request a court hearing within 15 days from the date the notice of decision is issued or within 10 days of the date the second notice of decision is issued, whichever is later.

e. For a review initiated under Iowa Code section 252H.14A, either parent may request a court hearing within 10 days of the issuance of the second notice of decision.

f. If the unit receives a timely written request or the unit determines that a court hearing is necessary, the unit shall certify the matter to the district court. An objecting parent may seek recourse by filing a private petition for modification through the district court.

[ARC 9352B, IAB 2/9/11, effective 4/1/11; ARC 4576C, IAB 7/31/19, effective 9/4/19; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.64(252B,252H) Financial information. The child support recovery unit shall attempt to obtain and verify information concerning the financial circumstances of the parents subject to the order to be reviewed necessary to conduct the review.

99.64(1) *Financial statements.* Except for a review initiated under Iowa Code section 252H.14A, both parents subject to the order to be reviewed shall provide a financial statement and verification of income within ten days of service of the notice of the unit's intent to review the obligation. If a review is initiated under Iowa Code section 252H.14A and the first notice of decision is challenged as described in subrule 99.63(4), both parents shall be requested to provide a financial statement and verification of income within ten days of the unit's request.

a. Verification of income shall include, but not be limited to, the following: copies of state and federal income tax returns, W-2 statements, pay stubs, or a signed statement from an employer or other source of income.

b. The child support recovery unit may also request that the parent requesting review provide an affidavit regarding the financial circumstances of the nonrequesting parent when the unit is otherwise unable to obtain financial information concerning the nonrequesting parent. The requesting parent shall complete the affidavit if the parent possesses sufficient information to do so.

99.64(2) *Independent sources.* The child support recovery unit may utilize other resources to obtain or confirm information concerning the financial circumstances of the parents subject to the order to be reviewed.

a. These resources include, but are not limited to, the following: the Iowa workforce development department, the Iowa department of revenue, the Internal Revenue Service, the employment, revenue, and child support recovery agencies of other states, and the Social Security Administration.

b. In the absence of other verification of income and deductions allowed under the mandatory support guidelines, the child support recovery unit may estimate the net earned income of a parent for the purpose of determining the amount of support that would be due under the guidelines by deducting 20 percent from the gross earned income confirmed by an independent source. A parent may challenge this estimate by providing verification of actual earned income deductions.

99.64(3) *Availability of medical insurance.* Both parents subject to the order to be reviewed shall provide documentation regarding the availability of health insurance coverage for the children covered under the order, and the cost of the coverage, within ten days of a written request by the child support recovery unit. Verification may include, but not be limited to: a copy of the health benefit plan including the effective date of the plan, a letter from the employer detailing the availability of health insurance, or any other source that will serve to verify health insurance information and the cost of the coverage.

[ARC 9352B, IAB 2/9/11, effective 4/1/11]

441—99.65(252B,252H) Review and adjustment of a child support obligation.

99.65(1) *Conducting the review.* The child support recovery unit or its attorney shall review the case for administrative adjustment of a child support obligation unless it is determined that any of the following exist:

a. The location of one or both of the parents is unknown.

b. The variation from the Iowa Supreme Court mandatory child support guidelines is based on any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

- c. The criteria of rule 441—99.62(252B,252H) are not met.
- d. The end date of the order is less than 12 months in the future or the youngest child is 17½ years of age.

99.65(2) Civil action. The review and adjustment action that is certified to court for hearing shall proceed as an ordinary civil action in equity, and the child support recovery unit attorney shall represent the state of Iowa in those proceedings.

99.65(3) Private counsel. After the notice has been issued as described in subrule 99.63(2) or 99.63(3), any party may choose to be represented personally by private counsel. Any party who retains private counsel shall notify the child support recovery unit of this fact in writing.

[ARC 9352B, IAB 2/9/11, effective 4/1/11; ARC 3719C, IAB 3/28/18, effective 7/1/18]

441—99.66(252B,252H) Medical support. The child support recovery unit, or its attorney, shall review the medical support provisions contained in any permanent child support order which is subject to review under rule 441—99.65(252B,252H) and shall include in any adjustment order a provision for medical support as defined in Iowa Code chapter 252E, and as set forth in 441—Chapter 98, Division I, or other appropriate provisions pertaining to medical support for all children affected directly by the child support order under review.

[ARC 9352B, IAB 2/9/11, effective 4/1/11]

441—99.67(252B,252H) Confidentiality of financial information. Financial information provided to the child support recovery unit by either parent for the purpose of facilitating the review and adjustment process may be disclosed to the other parties to the case, or to the district court, as follows:

99.67(1) Financial statements. Statements of financial status may be disclosed to either party.

99.67(2) Other documentation. Supporting financial documentation such as state and federal income tax returns, pay stubs, IRS Form W-2, bank statements, and other written evidence of financial status may be disclosed to the court after the notice has been issued as described in subrule 99.63(2) or 99.63(3), unless otherwise prohibited by state or federal law.

[ARC 9352B, IAB 2/9/11, effective 4/1/11]

441—99.68(252B,252H) Payment of service fees and other court costs. Payment of fees for administrative review or service of process and other court costs associated with the review and adjustment process is the responsibility of the party requesting review unless the court orders otherwise or the requesting party, as a condition of eligibility for receiving public assistance benefits, has assigned the rights to child or medical support for the order to be modified.

A requesting party who is indigent or receiving public assistance may request deferral of fees and costs. For the purposes of the division, “indigent” means that the requesting party’s income is 200 percent or less than the poverty level for one person as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

441—99.69(252B,252H) Denying requests. A request for review by a parent subject to the order may be denied for the following reasons:

99.69(1) Rescinded IAB 8/2/95, effective 10/1/95.

99.69(2) It has been less than two years since the support order was filed with the court, last modified, or last reviewed for the purpose of adjustment.

99.69(3) The child support recovery unit or a child support agency of another state is not providing enforcement services for an ongoing support obligation under the order for which the review has been requested.

99.69(4) The request is based entirely on issues such as custody, visitation, or parenting time rights, which are not directly related to child support.

99.69(5) The request is for the sole purpose of modifying the amount of delinquent support that has accrued under a support order.

99.69(6) The request is for the review of a temporary support order.
 [ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.70(252B,252H) Withdrawing requests. If the requesting party contacts the child support recovery unit to withdraw the request, the child support recovery unit shall proceed as follows:

99.70(1) Best interests of the child. Rescinded IAB 2/5/03, effective 4/1/03.

99.70(2) Consent of both parties. The child support recovery unit shall notify the nonrequesting party of the requesting party's desire to withdraw the request.

a. If the nonrequesting party indicates a desire to continue the review, the unit shall proceed with the review and adjust the obligation, if appropriate.

b. If the nonrequestor indicates a desire to stop the process or fails to respond within ten days to the notification of the request to withdraw, the unit shall notify all parties that the review and adjustment process has been terminated.

99.70(3) Effect of withdrawal. If a request is successfully withdrawn pursuant to subrule 99.70(2), a later request by either party shall be subject to the limitations of subrule 99.62(2).

441—99.71(252H) Effective date of adjustment. Unless subject to court action or reconciliation of multiple Iowa orders, the new obligation amount shall be effective on the first date that the periodic payment is due under the order being modified after the unit files the adjustment order with the court.

These rules are intended to implement Iowa Code sections 252B.5 to 252B.7 and 598.21C(2) and Iowa Code chapter 252H.

441—99.72 to 99.80 Reserved.

DIVISION V
 ADMINISTRATIVE MODIFICATION

PREAMBLE

This division implements those provisions of Iowa Code chapter 252H which provide for administrative modification of support obligations when there is a substantial change in the financial circumstances of a party and when both parties agree to a change in an obligation through a cost-of-living alteration. These rules also provide for use of the administrative procedure to modify orders to add children, correct errors, set support which had previously been reserved or set at zero dollars, and increase support for minor obligors who do not comply with statutory educational or parenting class requirements or who are no longer minors.

441—99.81(252H) Definitions.

"Additional child" means a child to be added to an existing support order covering another child of the same parents.

"Born of a marriage" means a child was born of a woman who was married at the time of conception, birth, or at any time during the period between conception and birth of the child pursuant to Iowa Code chapter 252A and Iowa Code section 144.13.

"Cost-of-living alteration" means a change in an existing child support order that equals an amount which is the amount of the support obligation following application of the percentage change of the consumer price index for all urban consumers, United States city average, as published in the Federal Register by the federal Department of Labor, Bureau of Labor Statistics, pursuant to Iowa Code section 252H.2.

"Guidelines" means the most current guidelines and criteria prescribed by the Iowa Supreme Court for determining the amount of child support to be awarded.

"Parent" means a person who is a responsible person or a caretaker, as those terms are defined in rule 441—95.1(252B).

"Substantial change of circumstances," for the purposes of this division, means:

1. There has been a change of 50 percent or more in the net income of a parent, as determined by comparing the new net income with the net income upon which the current child support obligation was based, and

2. The change is due to financial circumstances which have existed for a minimum period of three months and can reasonably be expected to exist for an additional three months, pursuant to Iowa Code section 252H.18A.

441—99.82(252H) Availability of service. The child support recovery unit shall provide the services described in this division for a support order originally entered or a foreign order registered in the state of Iowa. The order must be one which:

1. Involves at least one child born of a marriage or one child for whom paternity has been legally established.

2. Is being enforced by the unit in accordance with Iowa Code chapter 252B.

3. Is subject to the jurisdiction of this state for the purposes of modification.

4. Is not subject to or is not appropriate for review and adjustment.

5. Provides for support of at least one child under the age of 18 or a child between the ages of 18 and 19 years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person's reaching 19 years of age.

6. Has an obligation ending more than 12 months in the future.

7. Involves parents for whom the location of both parents is known.

441—99.83(252H) Modification of child support obligations. Permanent child support obligations meeting the criteria set forth in rule 441—99.82(252H) may be modified at the initiative of the unit, or upon written request of either parent subject to the order submitted on Form 470-2749. Any action shall be limited to adjustment, modification, or alteration of the child support or medical provisions of the support order. The duration of the underlying order shall not be modified. The procedures used by the child support recovery unit to determine if a modification is appropriate are as follows:

99.83(1) Substantial change of circumstances. Procedures to modify the support obligation may be initiated outside the minimum time frame described in subrule 99.62(2) if a request is received from either parent and if the parent has submitted verified documentation of a substantial change in circumstances which indicates both of the following:

a. A change of at least 50 percent in the net income of a parent as defined by guidelines. The new net income will be compared to the net income upon which the current child support obligation was based.

b. The change is due to financial circumstances which have existed for a minimum period of three months and can reasonably be expected to exist for an additional three months.

The unit shall review the request and documentation and, if appropriate, issue a notice of intent to modify as described in subrule 99.84(1).

99.83(2) Adding provisions for additional children. Procedures to modify the support obligation may be initiated if:

a. A parent requests, in writing, or the unit determines that it is appropriate to add an additional child to the support order and modify the obligation amount according to the guidelines pursuant to Iowa Code section 598.21B and Iowa Code section 252B.7A; and

b. Paternity has been legally established.

When adding a child to an order through administrative modification, medical support provisions shall apply to the additional child.

99.83(3) Reserved, zero-dollar-amount, or medical-provisions-only orders. Procedures to modify the support obligation may be initiated if:

a. A parent requests a modification in writing or the unit determines that it is appropriate to include a support amount based on the guidelines; and

b. The original order:

(1) Reserved establishment of an ongoing, dollar-amount support obligation giving a specific reason other than lack of personal jurisdiction over the obligor, or

(2) Set the amount at zero, or

(3) Was for medical provisions only.

99.83(4) Corrections. Procedures to modify the support obligation may be initiated if:

a. An error or omission pertaining to child support or medical provisions was made during preparation or filing of a support order; and

b. A necessary party requests a modification or the unit determines that a modification to correct an error or omission is appropriate.

99.83(5) Noncompliance by minor obligors. The unit may initiate procedures to modify a support order if a parent requests modification in writing or the unit determines that it is appropriate when:

a. An obligor who is under 18 years of age fails to comply with the requirement to attend parenting classes pursuant to Iowa Code section 598.21G; or

b. An obligor who is 19 years of age or younger fails to provide proof of compliance with education requirements described in Iowa Code section 598.21B(2) “e”; or

c. The obligor no longer meets the age requirements as defined in Iowa Code section 598.21B(2) “e” or 598.21G.

99.83(6) Cost-of-living alteration. A support order may be modified to provide a cost-of-living alteration if all the following criteria are met:

a. A parent requests a cost-of-living alteration in writing.

b. At least two years have passed since the order was filed with the court or last reviewed, modified, or altered.

c. The nonrequesting parent signs a statement agreeing to the cost-of-living alteration of the support order.

d. Each parent signs a waiver of personal service accepting service by regular mail.

e. The current support order addresses medical support for the children.

f. A copy of each affected order is provided, if the unit does not already have copies in its files.

[ARC 9352B, IAB 2/9/11, effective 4/1/11; ARC 1357C, IAB 3/5/14, effective 5/1/14; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.84(252H) Notice requirements. The child support recovery unit shall provide written notification to parents affected by a permanent child support obligation being enforced by the unit as follows:

99.84(1) Notice of intent to modify. When a request for administrative modification is received or the unit initiates an administrative modification, the unit shall provide written notice to each parent of its intent to modify.

a. The notice shall include the legal basis and purpose for the action; a request for income or other information necessary for the application of guidelines (if applicable); an explanation of the legal rights and responsibilities of the affected parties, including time frames; and procedures for contesting the action.

b. The unit shall take the following actions to notify parents:

(1) Rescinded IAB 2/5/03, effective 4/1/03.

(2) If the modification is based on subrules 99.83(1) through 99.83(5), notice shall be provided to each parent. The notice shall be served in accordance with the Iowa Rules of Civil Procedure or Iowa Code section 252B.26 or 252H.19.

(3) If the modification is based on provision of a cost-of-living alteration as established at subrule 99.83(6) and the required documentation is included, the child support recovery unit shall notify each parent of the amount of the cost-of-living alteration by regular mail to the last-known address of each parent or, if applicable, each parent’s attorney. The notice shall include:

1. The method of determining the amount of the alteration pursuant to Iowa Code section 252H.21.

2. The procedure for contesting a cost-of-living alteration by making a request for review of a support order as provided in Iowa Code section 252H.24.

3. A statement that either parent may waive the 30-day notice waiting period. If both parents waive the notice waiting period, the unit may prepare an administrative order altering the support obligation.

99.84(2) Notice of decision to modify. The unit shall issue a notice of its decision to modify the support order to each parent affected by the support obligation at each parent's (or attorney's) last-known address. The notice shall contain information about whether the unit will continue or terminate the action and the procedures and time frames for contesting the action by requesting a court hearing pursuant to 441—subrule 99.86(2).

[ARC 9352B, IAB 2/9/11, effective 4/1/11]

441—99.85(252H) Financial information. The child support recovery unit may attempt to obtain and verify information concerning the financial circumstances of the parents subject to the order to be modified that is necessary to conduct an analysis and determine support. The unit does not require financial information if the request is for a cost-of-living alteration.

99.85(1) Financial statements. Parents subject to the order shall provide a financial statement and verification of income within ten days of a written request by the unit.

a. If the modification action is based on a substantial change of circumstances:

(1) The requesting party must provide Form 470-2749, Request to Modify a Child Support Order, and documentation that proves the amount of change in net income and the date the change took place, such as:

1. Copies of state and federal income tax returns, W-2 statements, or pay stubs, or
2. A signed statement from an employer or other source of income.

(2) The unit shall review the request and documentation. If appropriate, the unit shall issue to each parent a notice of intent to modify the order as stated in subrule 99.84(1) and a financial statement. Each parent shall complete and sign the financial statement and return it to the unit with verification of income and deductions as described in subrule 99.1(3).

b. The unit may require a completed and signed financial statement and verification of income from each parent as described in subrule 99.1(3) if the modification is based on:

- (1) Addition of a child;
- (2) Changing a reserved or zero-dollar-amount obligation;
- (3) Changing a medical-provisions-only obligation;
- (4) Making a correction (if financial information is needed); or
- (5) Noncompliance by a minor obligor as defined in Iowa Code section 598.21B(2) "e" or 598.21G.

c. The unit may also request that a parent requesting a modification provide an affidavit regarding the financial circumstances of the nonrequesting parent when the unit is otherwise unable to obtain financial information concerning the nonrequesting parent. The requesting parent shall complete the affidavit if the parent possesses sufficient information to do so.

d. The unit may also use occupational wage rate information or the median income for parents on the unit caseload to determine the gross income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

e. Self-employment income will be determined as described in subrule 99.1(5).

99.85(2) Independent sources. The child support recovery unit may use other resources to obtain or confirm information concerning the financial circumstances of the parents subject to the order to be modified as described in rule 441—99.1(234,252B).

99.85(3) Guidelines calculations. The unit shall determine:

a. The appropriate amount of the child support obligation (excluding cost-of-living alteration amounts) as described in rules 441—99.1(234,252B) through 441—99.5(234,252B), and

b. Medical support provisions as described in Iowa Code chapter 252E and rules 441—98.1(252E) through 441—98.7(252E).

[ARC 9352B, IAB 2/9/11, effective 4/1/11; ARC 5892C, IAB 9/8/21, effective 1/1/22; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.86(252H) Challenges to the proposed modification action. For modification actions based on subrules 99.83(1) through 99.83(5), each parent shall have the right to request a conference to contest

the proposed modification. Either parent, or the unit, may also request a court hearing. For requests made based on subrule 99.83(6), either parent may contest the cost-of-living alteration by making a request for a review and adjustment of the support order.

99.86(1) Conference. Either parent may contest the proposed modification based on subrules 99.83(1) through 99.83(5) by means of a conference with the office of the unit that issued the notice of intent to modify.

- a. Only one conference shall be held per parent.
- b. The request must be made within ten days of the date of service of the notice of intent to modify.
- c. The office that issued the notice of intent to modify shall schedule a conference with the parent and advise the parent of the date, time, place, and procedural aspects of the conference.
- d. Reasons for contesting the modification include, but are not limited to, mistake of fact regarding the identity of one of the parties or the amount or terms of the modification.
- e. The child support recovery unit may conduct the conference in person or by telephone.
- f. If the party who requested the conference fails to attend the conference, only one alternative time shall be scheduled by the child support recovery unit.
- g. The results of a conference shall in no way affect the right of either party to request a court hearing pursuant to subrule 99.86(2).

h. Upon completion of the conference, the unit shall issue a notice of decision to modify as described in subrule 99.84(2).

99.86(2) Court hearing.

a. Either parent, or the unit, may contest the proposed modification, based on subrules 99.83(1) through 99.83(5), by requesting a court hearing within the latest of any of the following time periods:

- (1) Twenty days from the date of successful service of the notice of intent to modify,
- (2) Ten days from the date scheduled for a conference, or
- (3) Ten days from the date of issuance of a notice of decision to modify.

b. If the unit receives a timely written request, the unit shall certify the matter to the district court as described in Iowa Code section 252H.8.

c. If a timely request is not received, if waiting periods have been waived, or if the notice periods have expired, the unit shall prepare an administrative order as provided in Iowa Code section 252H.9.

99.86(3) Contesting a proposed cost-of-living alteration. Either parent may contest a cost-of-living alteration within 30 days of the date of the notice of intent to modify by making a request for a review of the support order as provided in Iowa Code section 252H.13.

a. If the unit receives a timely written request for review, the unit shall terminate the cost-of-living alteration process and proceed with the review and adjustment process.

b. If a timely request is not made, or the notice waiting period has been waived by both parties, or the notice period has expired, the unit shall prepare an administrative order as provided in Iowa Code section 252H.24.

441—99.87(252H) Misrepresentation of fact.

99.87(1) The unit shall not modify the support order based on a substantial change of circumstances if a change in income is due to any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

99.87(2) The unit may request verification that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.

[ARC 3719C, IAB 3/28/18, effective 7/1/18]

441—99.88(252H) Effective date of modification. Unless subject to court action or reconciliation of multiple Iowa orders, the new obligation shall be effective on the first date that the periodic payment is due under the order being modified after the unit files the modification order with the court. If the modification is based on a reserved, zero-dollar-amount, or medical-provisions-only obligation, the new obligation shall be effective 20 days after generation of the administrative modification order.

441—99.89(252H) Confidentiality of financial information. Financial information provided to the child support recovery unit by either parent for the purpose of facilitating the modification process may be disclosed to the other parties to the case, or the district court, as follows:

99.89(1) *Financial statements.* The financial statement or affidavit may be disclosed to either party.

99.89(2) *Other documentation.* Supporting financial documentation such as state and federal income tax returns, paycheck stubs, IRS Form W-2, bank statements, and other written evidence of financial status may be disclosed to the court unless otherwise prohibited by state or federal law.

441—99.90(252H) Payment of fees. Payment of service of process and other costs associated with the modification process is the responsibility of the party requesting modification unless the court orders otherwise or the requesting party, as a condition of eligibility for receiving public assistance benefits, has assigned the rights to child or medical support for the order to be modified.

A requesting party who is indigent or receiving public assistance may request deferral of fees and costs. For the purposes of this division, “indigent” means that the requesting party’s income is 200 percent or less than the poverty level for one person as defined by the United State Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

441—99.91(252H) Denying requests. A request for modification by a parent subject to the order may be denied if the criteria in rule 441—99.82(252H) are not met or the following conditions exist:

99.91(1) *Nonsupport issues.* The request is based entirely on issues such as custody, visitation, or parenting time rights.

99.91(2) *Request only for delinquent support.* The request is for the sole purpose of modifying the amount of delinquent support that has accrued under a support order.

99.91(3) *Temporary order.* The request is for the modification of a temporary support order.

99.91(4) *Two-year time frame.* The request is for a cost-of-living alteration and it has been less than two years since the order was filed with the court or last reviewed, modified, or altered.

99.91(5) *Change of circumstances.* The request is based on a substantial change in circumstances and:

a. The requestor’s net income has not changed by at least 50 percent, as required in paragraph 99.83(1) “*a,*” or

b. The requestor has not provided adequate documentation of the change in income, as required in subrule 99.85(1), or

c. The change in income has not yet lasted for three months, as required in paragraph 99.83(1) “*b,*” or

d. The change in income is not expected to last another three months, as required in paragraph 99.83(1) “*b,*” or

e. The change in income is due to material misrepresentation of fact, as explained in rule 441—99.87(252H).

[ARC 3719C, IAB 3/28/18, effective 7/1/18; ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.92(252H) Withdrawing requests. If the requesting party contacts the child support recovery unit to withdraw the request, the child support recovery unit shall notify the nonrequesting party of the requesting party’s desire to withdraw the modification request. If the nonrequesting party indicates, in writing, a desire to continue with the modification process, the child support recovery unit shall proceed, and if appropriate, modify the support order. If there is no response from the nonrequesting party or if the nonrequesting party also wants the process to end, the unit shall end the modification process. If the unit initiated the modification action, the unit may terminate the process if, after notifying both parents, neither parent indicates a desire to continue with the modification.

These rules are intended to implement Iowa Code chapter 252H.

441—99.93 to 99.100 Reserved.

DIVISION VI
SUSPENSION AND REINSTATEMENT OF SUPPORT
PART A
SUSPENSION BY MUTUAL CONSENT

441—99.101(252B) Definitions. As used in this part, unless the context otherwise requires:

“*Caretaker*” means a natural person with whom a child is residing and who is not legally entitled to receive support for that child pursuant to the order that is the subject of the pending suspension request.

“*Child*” means the same as defined in Iowa Code section 252E.1.

“*Child support recovery unit*” or “*unit*” means the same as defined in rule 441—95.1(252B) and Iowa Code section 252B.1.

“*Obligee*” means a custodial parent or other natural person legally entitled to receive a support payment on behalf of a child.

“*Obligor*” means a noncustodial parent or other natural person who is ordered to pay support pursuant to the order that is the subject of the pending suspension request.

“*Public assistance*” means the same as defined in Iowa Code section 252H.2.

“*Spousal support*” means either a set amount of monetary support, or medical support as defined in Iowa Code section 252E.1, for the benefit of a spouse or former spouse, including alimony, maintenance, or any other term used to describe these obligations.

“*Step change*” means a change designated in a support order that specifies the amount of the child support obligation as the number of children entitled to support under the order changes.

“*Support*” means the same as defined in Iowa Code section 252D.16, and shall include spousal support and support for a child.

“*Support for a child*” means either a set amount of monetary support (child support), or medical support as defined in Iowa Code section 252E.1, for the benefit of a child. This term does not include spousal support as defined in this rule.

“*Support order*” means the same as a “court order” as defined in Iowa Code section 252C.1.
[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.102(252B) Availability of service. The child support recovery unit shall provide the services described in this part only with respect to support orders entered or registered in this state for which the unit is providing enforcement services in accordance with Iowa Code chapter 252B to collect current or accrued support.

99.102(1) Services described in this part shall only be provided if a court in this state would have continuing, exclusive jurisdiction to suspend and reinstate the order under Iowa Code chapter 252K.

99.102(2) Services described in this part shall be provided only if no prior request for suspension of all or part of a support order has been filed with the unit pursuant to Iowa Code section 252B.20 and no prior request for suspension of all or part of a support order has been served by the unit pursuant to Iowa Code section 252B.20A during the two-year period preceding the request.
[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.103(252B) Basis for suspension of support.

99.103(1) Reconciliation. The child support recovery unit shall assist an obligor and obligee in suspending support for a child and, if contained in a child support order, spousal support, when the obligor and obligee are reconciled and are residing together, with at least one child entitled to support under the order, in the same household.

99.103(2) Change in residency. The unit shall assist an obligor and obligee in suspending support for a child when the child is residing with the obligor; however, the unit shall not assist in suspending any spousal support provisions of a support order on this basis. The unit shall also assist an obligor and obligee in suspending support for a child residing with a caretaker who has not requested unit services, if the child is not receiving public assistance.

99.103(3) Affected children. The unit shall assist an obligor and obligee in suspending all or part of a support order as provided in this part if the basis for suspension as described in this rule applies to the children entitled to support under the order to be suspended as follows:

a. If the basis for suspension applies to all of the children, the unit shall assist in suspending support obligations for all of the children.

b. If the basis for suspension applies to at least one but not all of the children and if the support order includes a step change, the unit shall assist in suspending the support obligations for children for whom the basis for suspension applies.

99.103(4) Limited to current support. The provisions in this part for suspending support apply only toward ongoing or current support. Any support that has accrued prior to the entry of an order suspending support, including judgments for past periods of time, is unaffected by the suspension.

99.103(5) Duration of conditions. The basis for suspension of support as provided in subrule 99.103(2) and subrule 99.103(3) must reasonably be expected to continue for not less than six months from the date a request for assistance to suspend is received by the child support recovery unit.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.104(252B) Request for assistance to suspend.

99.104(1) Submitting a request. The obligor and obligee subject to a support order being enforced by the unit may request that the unit assist in having the ongoing support provisions suspended as follows:

a. A request for suspension shall be submitted to the local child support unit providing services using Form 470-3033 and Form 470-3032.

b. The unit shall provide Forms 470-3032 and 470-3033 to the obligor or obligee upon request.

c. Both forms must be signed by both the obligor and the obligee affected by the order to be suspended. In the event that current support payments are assigned to an individual or entity other than the obligee named in the original order, but may revert to the original obligee at a future date without court action, both the original obligee and the current assignee must sign both forms.

d. Form 470-3032 must be notarized.

e. The request shall contain sufficient information to allow the local unit to identify the court order and parties involved, and a statement that the obligor and obligee expect the basis for suspension to continue for not less than six months.

f. If the obligor and obligee are requesting suspension of more than one order at the same time, the obligor and obligee shall be required to submit only one copy of Form 470-3033, identifying each order the request involves; however, the obligor and obligee shall be required to submit a separate, signed and notarized affidavit, Form 470-3032, for each order.

99.104(2) Denying a request. The local unit providing services shall issue a written notice to the obligor and obligee indicating that a properly completed request is denied.

a. This notice shall be sent by first-class regular mail to the last-known address of the obligor and obligee or, if applicable, to the last-known address of the obligor's or obligee's attorney.

b. If the basis for suspension is reconciliation, one notice shall be sent to the address shared by the obligor and obligee. If the basis for suspension is a change in residency of the children entitled to support, a separate notice shall be issued to the obligor and obligee at their respective last-known addresses.

c. The notice denying a request shall indicate the reason for denial.

d. A request for suspension shall be denied when the conditions specified in Iowa Code section 252B.20, rule 441—99.102(252B), or rule 441—99.103(252B) are not met.

e. Denial of a request is not subject to appeal or review under Iowa Code chapter 17A.

[ARC 2813C, IAB 11/9/16, effective 1/1/17; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.105(252B) Order suspending support. To approve a request to suspend support, the unit shall prepare and present to the district court an order suspending support as provided in Iowa Code section 252B.20.

99.105(1) When the basis for suspension is reconciliation, the suspension shall apply to any ongoing support provisions of the order, including medical support, with respect to any child residing with the parents and with respect to any spouse or former spouse entitled to support under the order to be suspended.

99.105(2) When the basis for suspension is a change in residency of one or more of the children entitled to support, the suspension shall apply to ongoing support provisions, including medical support,

with respect to only the children entitled to support under the order who are residing with the obligor. Any spousal support also ordered in the same support order shall remain unaffected by this action.

99.105(3) A copy of the filed order shall be sent by first-class regular mail to the last known address of the obligor and obligee, or, if applicable, to the last known address of the obligor's or obligee's attorney.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.106(252B) Suspension of enforcement of current support. The child support recovery unit shall suspend enforcement actions intended to collect or enforce any current support obligation that would have accrued during the time the support obligation is suspended. The unit shall continue to provide all appropriate enforcement services to collect any support not suspended and any arrearages that accrued before the effective date of the suspension.

PART B
SUSPENSION BY PAYOR'S REQUEST

441—99.107(252B) Definitions. As used in this part, unless the context otherwise requires:

“*Caretaker*” means a natural person with whom a child is residing and who is not legally entitled to receive support for that child pursuant to the order that is the subject of the pending suspension request.

“*Child*” means the same as defined in Iowa Code section 252E.1.

“*Child support recovery unit*” or “*unit*” means the same as defined in rule 441—95.1(252B) and Iowa Code section 252B.1.

“*Obligee*” means a custodial parent or other natural person legally entitled to receive a support payment on behalf of a child.

“*Obligor*” means a noncustodial parent or other natural person who is ordered to pay support pursuant to the order that is the subject of the pending suspension request.

“*Public assistance*” means the same as defined in Iowa Code section 252H.2.

“*Step change*” means a change designated in a support order that specifies the amount of the child support obligation as the number of children entitled to support under the order changes.

“*Support*” means the same as defined in Iowa Code section 252D.16 and shall include support for a child.

“*Support for a child*” means either a set amount of monetary support (child support), or medical support as defined in Iowa Code section 252E.1, for the benefit of a child. This term does not include spousal support as defined in rule 441—99.101(252B).

“*Support order*” means the same as a “court order” as defined in Iowa Code section 252C.1.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.108(252B) Availability of service. The child support recovery unit shall provide the services described in this part only with respect to support orders entered pursuant to Iowa Code chapter 252A, 252C or 252F for which the unit is providing enforcement services in accordance with Iowa Code chapter 252B to collect current or accrued support.

99.108(1) Services described in this part shall only be provided if a court in this state would have continuing, exclusive jurisdiction to suspend and reinstate the order pursuant to Iowa Code chapter 252K.

99.108(2) Services described in this part shall be provided only if no prior request for suspension of all or part of a support order has been filed with the unit pursuant to Iowa Code section 252B.20 and no prior request for suspension of all or part of a support order has been served by the unit pursuant to Iowa Code section 252B.20A during the two-year period preceding the request.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.109(252B) Basis for suspension of support.

99.109(1) *Child residing with obligor or caretaker.* The unit shall assist an obligor in suspending support for a child residing with the obligor or with a caretaker who has not requested unit services, if the child has been residing with the obligor or caretaker for more than 60 consecutive days.

99.109(2) *Orders eligible for suspension.*

a. The unit shall assist an obligor in suspending support for a child under this part only when there is no order in effect regarding legal custody, physical care, visitation, or parenting time for the child.

b. If an order exists that contains language regarding legal custody, physical care, visitation, or parenting time for the child, the unit shall deny the suspension request.

99.109(3) *Children on public assistance.* The children for whom ongoing support is being suspended shall not be receiving public assistance pursuant to Iowa Code chapter 239B or 249A or a comparable law of another state or foreign country, or if the children are receiving public assistance, the obligor must be considered to be a member of the same household as the children for the purposes of public assistance eligibility.

99.109(4) *Duration of conditions.* The basis for suspension of support under this part must reasonably be expected to continue for not less than six months from the date a request for assistance to suspend is received by the child support recovery unit.

99.109(5) *Affected children.* The unit shall assist an obligor in suspending all or part of a support order as provided in this part if the basis for suspension as described in this rule applies to the children entitled to support under the order to be suspended as follows:

a. If the basis for suspension applies to all of the children, the unit shall assist in suspending support obligations for all of the children.

b. If the basis for suspension applies to at least one but not all of the children and if the support order includes a step change, the unit shall assist in suspending the support obligations for children for whom the basis for suspension applies.

99.109(6) *Limited to current support.* The provisions in this part for suspending support apply only toward ongoing or current support. Any support that has accrued prior to the entry of an order suspending support, including judgments for past periods of time, is unaffected by the suspension.

[ARC 2813C, IAB 11/9/16, effective 1/1/17; ARC 5892C, IAB 9/8/21, effective 1/1/22]

441—99.110(252B) Request for assistance to suspend. The obligor subject to a support order being enforced by the unit may request that the unit assist in having the ongoing support provisions suspended as follows:

99.110(1) *Submitting a request.*

a. A request for suspension shall be submitted to the local child support unit providing services using Form 470-5348.

b. The unit shall provide Form 470-5348 to the obligor upon request.

c. The request form must be signed by the obligor affected by the order to be suspended.

d. The request shall contain sufficient information to allow the local unit to identify the court order and parties involved and shall attest that the children have lived in the obligor's household or the caretaker's household for more than 60 consecutive days and are expected to live there for at least six months.

99.110(2) *Submitting an affidavit.* After receiving a valid request for suspension, the local unit shall provide the requestor with Form 470-5349.

a. The obligor shall submit the affidavit for suspension to the local child support unit providing services. If the request for suspension is made pursuant to Iowa Code section 252B.20A(17), the caretaker must also submit an affidavit, Form 470-5349.

b. Form 470-5349 must be signed, attesting to the existence of the conditions under subrules 99.109(1) through 99.109(4). Form 470-5349 must be notarized.

c. If the obligor is requesting suspension of more than one order at the same time, the obligor shall be required to submit only one copy of Form 470-5348, identifying each order the request involves; however, the obligor shall be required to submit a separate, signed and notarized affidavit, Form 470-5349, for each order.

[ARC 2813C, IAB 11/9/16, effective 1/1/17; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.111(252B) Determining eligibility for suspension. Upon receipt of the request for suspension and the properly executed and notarized affidavit, the unit shall review the request and the affidavit to determine that the criteria have been met.

99.111(1) *If the criteria are not met.* If the criteria have not been met, the local unit providing services shall issue a written notice to the obligor indicating that the request is denied.

a. The notice shall be sent by first-class regular mail to the last-known address of the obligor or, if applicable, to the last-known address of the obligor's attorney.

b. The notice shall indicate the reason for denial and notify the obligor of the right to proceed through private counsel. Denial of the request is not subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A.

99.111(2) *If the criteria are met.* If the criteria are met, the unit shall proceed as follows:

a. The unit shall serve Form 470-5351 and Form 470-5352 and supporting documents on the obligee by any means provided in Iowa Code section 252B.26. The notice to the obligee shall include all of the following:

- (1) Information sufficient to identify the parties and the support order affected.
- (2) An explanation of the procedure for suspension under Part B and reinstatement of support under Part C of this division.
- (3) An explanation of the rights and responsibilities of the obligee to respond to the action.
- (4) A statement that, within 20 days of service, the obligee must submit a signed and notarized response to the unit objecting to at least one of the assertions in subrules 99.109(1) through 99.109(4). The statement shall inform the obligee that if, within 20 days of service, the obligee fails to submit a response as specified in this subparagraph, notwithstanding Rules of Civil Procedure 1.972(2) and 1.972(3), the unit will prepare and submit an order.

b. No sooner than 30 days after service on the obligee, the unit shall do one of the following:

- (1) If the obligee submits a signed and notarized objection to at least one of the assertions in subrules 99.109(1) through 99.109(4), deny the request and notify the parties in writing that the request is denied, providing reasons for the denial, and notifying the parties of the right to proceed through private counsel. Denial of the request is not subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A.
- (2) If the obligee cannot be served, the local unit providing services shall issue a written notice to the obligor indicating the request is denied, following the procedure described in subrule 99.111(2).
- (3) If the obligee does not timely submit a signed and notarized objection to the unit, prepare an order following the procedure described in rule 441—99.112(252B).

[ARC 2813C, IAB 11/9/16, effective 1/1/17; ARC 6856C, IAB 2/8/23, effective 4/1/23]

441—99.112(252B) Order suspending support. After approving a request to suspend support and properly serving the obligee, the unit shall prepare and present to the district court an order suspending support as provided in Iowa Code section 252B.20A.

99.112(1) The suspension shall apply to ongoing support provisions, including medical support, with respect to only the children entitled to support under the order who are residing with the obligor or caretaker.

99.112(2) A copy of the filed order shall be sent by first-class regular mail to the last-known address of the obligor and obligee or, if applicable, to the last-known address of the obligor's or obligee's attorney.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.113(252B) Suspension of enforcement of current support. The child support recovery unit shall suspend enforcement actions intended to collect or enforce any current support obligation that would have accrued during the time the support obligation is suspended. The unit shall continue to provide all appropriate enforcement services to collect any support not suspended and any arrearages that accrued before the effective date of the suspension.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

PART C
REINSTATEMENT OF SUPPORT

441—99.114(252B) Request for reinstatement. The unit may request that the court reinstate the suspended support obligation in accordance with the procedures found in Iowa Code sections 252B.20 and 252B.20A.

99.114(1) Either the obligor or the obligee affected by the suspended order may request reinstatement by submitting a written request for reinstatement to the child support recovery unit. The request must indicate that reinstatement is being requested and the reason for reinstatement and must contain sufficient information to identify the court order and parties involved. The request must also be signed by the requesting party.

99.114(2) The unit may, at its own initiative, request that the court reinstate a support obligation when it is determined that a child for whom the obligation was suspended is receiving public assistance benefits.

99.114(3) The unit shall issue a written notice approving or denying the request to any obligor or obligee requesting reinstatement. This notice shall be sent by first-class regular mail to the last-known address of the requesting party and shall indicate any reason for denial.

99.114(4) A properly completed request for reinstatement shall be denied when any of the following conditions exist:

a. The request is made by someone other than the obligor, the obligee, or the obligor's or obligee's attorney.

b. The unit is no longer providing enforcement services for the suspended order.

c. The request is received more than six months after the date of the filing of the order suspending support.

d. The request is for partial reinstatement of the suspended support order for some but not all of the children, and the order does not contain a step change.

e. A court in this state would not have continuing, exclusive jurisdiction to reinstate the order under Iowa Code chapter 252K.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.115(252B) Reinstatement. The child support recovery unit shall follow the procedures in Iowa Code sections 252B.20 and 252B.20A in seeking to have the court reinstate a support order.

99.115(1) The unit shall request that the court reinstate a spousal support provision previously suspended if the provision was included in the suspension in accordance with subrule 99.105(1) and if the unit receives a properly completed request from the obligor or the obligee.

99.115(2) The unit shall seek to have the previously suspended support for a child reinstated under this part when the conditions in paragraph "a" or "b" of this subrule are met. This provision shall not prohibit any party, including the child support recovery unit, from taking other action to establish support as provided for by law.

a. The basis for suspension no longer applies to any of the children for whom support was suspended; or

b. The basis for suspension continues to apply to some but not all of the children for whom support was suspended, and there is a step change in the order.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.116(252B) Reinstatement of enforcement of support. If a suspended support obligation is reinstated, the unit shall also reinstate all appropriate enforcement measures to enforce all reinstated ongoing support provisions of the support order.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

441—99.117(252B) Temporary suspension becomes final. The temporary suspension of a support order under this division shall become final if not reinstated in accordance with Iowa Code sections 252B.20 and 252B.20A.

[ARC 2813C, IAB 11/9/16, effective 1/1/17]

The rules in this division are intended to implement Iowa Code sections 252B.20 and 252B.20A.

441—99.118 to 99.120 Reserved

DIVISION VII
APPEALS

441—99.121(17A) Right of appeal. Department actions under this chapter are not subject to administrative appeal under 441—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

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[Filed ARC 5892C (Notice ARC 5709C, IAB 6/16/21), IAB 9/8/21, effective 1/1/22]

[Filed ARC 6856C (Notice ARC 6692C, IAB 11/30/22), IAB 2/8/23, effective 4/1/23]

CHAPTER 152
FOSTER CARE CONTRACTING

PREAMBLE

This chapter sets forth the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living, including standards for rate-setting, payment mechanisms, and provider monitoring, audits, and sanctions. The terms of these contracts are limited to no more than six years pursuant to 11—Chapter 118. This chapter also establishes provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with these foster care services. Refer to 441—Chapter 156 for additional program requirements.

441—152.1(234) Definitions.

“Affiliates” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

“Authorized representative,” within the context of rule 441—152.3(234), means that person appointed to carry out audit procedures, including an assigned auditor, fiscal consultant, or agent contracted for a specific audit or audit procedure.

“Bureau of service contract support” means the division of fiscal management bureau that is responsible for administering performance-based contracts.

“Child” means a person under 18 years of age or a person 18, 19, or 20 years of age who meets the criteria in Iowa Code section 234.1.

“Claim” means each record the department receives that tells the amount of requested payment and the service rendered by a provider to a child and family.

“Client” means a child who has been found to be eligible for foster care services through the department of human services.

“Confidence level” means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the universe from which the sample was drawn.

“Contract” means a formal written agreement between the department of human services and a provider of foster care services.

“Contract monitor” means a department employee who is assigned to assist in developing, monitoring, and evaluating a contract and to provide related technical assistance.

“Department” means the Iowa department of human services and includes the local offices of the department.

“Extrapolation” means using sample data meeting the confidence level requirement to estimate the total dollars of overpayment or underpayment.

“Family,” for purposes of child welfare service delivery, shall include the following:

1. The natural or adoptive parents, stepparents, domestic partner of the natural or adoptive parent, and children who reside in the same household.

2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child’s household who are responsible for the child’s supervision. Relatives within the fourth degree of consanguinity include: full or half siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.

3. A child who lives alone or who resides with a person or persons not legally responsible for the child’s support.

“Fiscal record” means a tangible and legible history that documents the criteria established for financial and statistical records as set forth in subrule 152.2(5).

“Grant” means an award of funds to develop specific programs or achieve specific outcomes.

“Juvenile court officer” means a person appointed as a juvenile court officer or chief juvenile court officer under Iowa Code chapter 602.

“*Non-prime programming time*” means any period of the day other than prime programming time and sleeping time.

“*Overpayment*” means any payment or portion of a payment made to a provider that is incorrect according to the laws and rules applicable to foster care services and results in a payment greater than that to which the provider is entitled.

“*Prime programming time*” means any period of the day when special attention, supervision, or treatment is necessary (for example, upon awakening of the clients in the morning until their departure for school, during meals, after school, during transition between activities, evenings and bedtime, and on nonschool days such as weekends, holidays, and school vacations).

“*Probation*” means a specified period of conditional participation in the provision of foster care services.

“*Provider*” means the entity that has executed a contract with the department to provide services.

“*Random sample*” means a systematic (or every “nth” unit) sample for which each item in the universe has an equal probability of being selected.

“*Referral worker*” means the department worker or juvenile court officer who refers the case to a provider and who is responsible for carrying out the follow-up activities of determining client eligibility and ensuring that the service authorization is completed.

“*Service authorization*” means the process of determining service necessity and the level of care and number of units of service to be provided to a child.

“*Service record*” means an individual, tangible, and legible file that records service-related activities set forth in subrule 152.2(4).

“*Site*” means each licensed location of the foster care provider.

“*Sleeping time*” means any period of the day during which clients are normally sleeping.

“*Suspension of payments*” means the withholding of all payments due a provider until resolution of the matter in dispute between the provider and the department.

“*Underpayment*” means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the foster care services program and to which the provider is entitled.

“*Unit of service*” means one day for group care and child welfare emergency services shelter.

“*Universe*” means all items (claims) submitted by a specific provider for payment during a specific period, from which a random sample will be drawn.

“*Withholding of payments*” means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted claims for purposes of offsetting overpayments previously made to the provider.

[ARC 2885C, IAB 1/4/17, effective 3/1/17; ARC 3442C, IAB 11/8/17, effective 1/1/18; ARC 6857C, IAB 2/8/23, effective 4/1/23]

441—152.2(234) Conditions of participation.

152.2(1) *Provider licensure.* A provider facility shall obtain licensure prior to accepting placements from the department.

152.2(2) *Provider staffing.* At a minimum, all providers shall meet all licensure requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 105, Chapter 108, or Chapter 114.

152.2(3) *Provider charges.* A provider shall not charge departmental clients more than it receives for the same foster care services provided to nondepartmental clients. The provider shall agree not to require any fee from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy.

152.2(4) *Maintenance of service records.* A provider shall maintain complete and legible records as required in this subrule.

a. For foster group care and shelter care, the provider shall establish and maintain confidential, individual service records for each client receiving foster care services. The service records must adequately support the provision of child welfare services and group care maintenance as defined in

rule 441—156.1(234). The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and 441—Chapter 105 and shall also include all of the following:

- (1) Additional reports, if requested by the referral worker.
- (2) Form 470-3055.
- (3) Daily documentation of billed per diem services. The documentation shall include:
 1. The child's first and last name;
 2. The month, day, and year service was provided;
 3. The first and last names of the persons who provided the service;
 4. A clear description of the specific service rendered, including interventions, actions, and activities performed which support the provision of child welfare services.
- (4) Notes, which shall be entered no less than every seven calendar days, indicating the child's general progress in regard to the child's care plan.
- (5) Any problem areas or unusual behavior for the child.

b. For supervised apartment living, the provider shall establish and maintain confidential, individual service records for each client receiving supervised apartment living services. The service records must adequately support the provision of services consistent with rules 441—108.10(238) and 441—202.9(234).

c. Failure to maintain records or failure to make records available to the department or to its authorized representatives upon request may result in a notice of violation and recoupment of payments pursuant to rules 441—152.3(234) and 441—152.4(234).

152.2(5) Maintenance of financial and statistical records. The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. The records shall be available for review at any time during normal business hours by department personnel, the department's fiscal consultant, and state or federal audit personnel.

a. At a minimum, financial and statistical records shall include all revenue and expenses supported by a provider's general ledger and documentation on file in the provider's office. These records include, but are not limited to:

- (1) Payroll information.
- (2) Capital asset schedules.
- (3) All canceled checks, deposit slips, and invoices (paid and unpaid).
- (4) Audit reports (if any).
- (5) The board of directors' minutes (if applicable).
- (6) Loan agreements and other contracts.
- (7) Reviewable, legible census reports and documentation of units of service provided to departmental clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.

(8) For nondepartmental clients, sufficient documentation of utilization to establish a complete unit of service count.

b. The provider shall maintain a list of all staff and supervisors providing foster care services and their qualifications for each program.

c. Independent audits. When a provider has an audit conducted, a firm not related to the provider shall conduct the audit. The provider shall submit a copy of the independent audit report to the department within 30 days of receipt of the report. The bureau of service contract support shall maintain the report.

152.2(6) Cost report. Providers shall complete Form 470-5421 as required by contract. The instructions for the cost report are found in Comm. 502.

a. *Due date.* The cost report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. The provider may request a one-month extension from the bureau of service contract support.

b. *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

c. County reimbursement for child welfare services shelter costs. If a shelter care provider's actual and allowable costs as set forth in 441—Chapter 156 for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county shall not be included by the department in its reimbursement rate determination, as long as the amount paid is not greater than the provider's actual and allowable costs or the statewide average of actual and allowable costs as identified in annual appropriations, whichever is less.

[ARC 2885C, IAB 1/4/17, effective 3/1/17; ARC 6857C, IAB 2/8/23, effective 4/1/23]

441—152.3(234) Provider reviews. The department may, at its discretion, review any provider at any time. Records generated and maintained by the department or its fiscal agent may be used by reviewers and in all proceedings of the department.

152.3(1) Review of provider records. The department shall have the authority to conduct a scheduled or unannounced visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster care services.

152.3(2) Purpose. Upon proper identification, authorized representatives of the department shall have the right to review the service and fiscal records of the provider to determine whether:

- a.* The department has accurately paid claims for services.
- b.* The provider has furnished the services.
- c.* The provider has retained service records and fiscal records that substantiate claims submitted for payment during the review period.
- d.* Expenses reported to the department have been handled as required under subrule 152.2(6).

152.3(3) Method. The department shall select the appropriate method of conducting a review and shall protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department. Review procedures may include, but are not limited to, the following:

- a.* Comparing service and fiscal records with each claim.
- b.* Interviewing clients and employees of providers.

152.3(4) Sampling. The department's procedures for reviewing a provider's service records may include the use of random sampling and extrapolation. When these procedures are used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level.

a. Findings. The review findings generated through the review procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. Extrapolation. Findings of the sample will be extrapolated to the universe for the review period. The total of the payments determined to be in error in the review sample shall be divided by the total payments in the reviewed sample to calculate the percentage of dollars paid in error. This percentage shall then be multiplied by the total payments in the review universe to determine the extrapolated overpayment.

c. Disagreement with findings. When the provider disagrees with the department's review findings and the findings have been generated through sampling and extrapolation, the provider may present evidence to show that the sample was invalid. The burden of proof of compliance rests with the provider. The evidence may include a 100 percent review of the universe of provider records used by the department in the drawing of the department's sample. This review shall:

- (1) Be arranged and paid for by the provider.
- (2) Be conducted by a certified public accountant.
- (3) Demonstrate that bills and records not reviewed in the department's sample complied with program regulations and requirements.
- (4) Be submitted to the department with all supporting documentation.

152.3(5) Actions based on review findings.

a. The department shall report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 9.

b. When an overpayment is found, the department may do one or more of the following:

- (1) Request repayment in writing.
- (2) Impose sanctions provided for in rule 441—152.4(234).
- (3) Investigate and refer the matter to an agency empowered to prosecute.

[ARC 2885C, IAB 1/4/17, effective 3/1/17]

441—152.4(234) Sanctions against providers. Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions.

152.4(1) Grounds for sanction. The department may impose sanctions against a provider for committing one or more of the following actions:

a. Failing to provide and maintain the quality of the services to children and families within established standards, including:

- (1) Failing to meet standards required by state or federal law for licensure.
- (2) Failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.
- (3) Engaging in a course of conduct or performing an act that is in violation of state or federal regulations or continuing that conduct following notification that it should cease.
- (4) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions subject to this chapter.
- (5) Receiving a formal reprimand or censure by an association of the provider's peers for unethical practices.

(6) Being suspended or terminated from participation in another governmental program.

(7) Committing a negligent practice resulting in client death or injury.

b. Failing to disclose or make available to the department or its authorized agent records of services provided to a child and family and records of payments made for those services.

c. Failing to provide accurate and auditable cost report information or engaging in deceptive billing practices, such as, but not limited to:

- (1) Presenting or causing to be presented for payment any false or deceptive claim for services.
- (2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

d. Submitting or causing to be submitted false information to meet service authorization requirements.

e. Inducing, furnishing or otherwise causing the child or family to receive foster care services that are not authorized (overutilization of services).

f. Rebating or accepting a fee or portion of a fee or a charge for referrals of a child or family.

g. Failing to repay or arrange for the repayment of identified overpayments or other erroneous payments.

h. Failing to submit the cost report on time or failing to submit complete responses to follow-up questions from the department or its fiscal consultant within 14 days of request without written approval from the bureau of service contract support.

152.4(2) Notice of violation. Should the department have information that indicates that a provider may have submitted bills or been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted.

a. Notification shall set forth:

- (1) The nature of the discrepancies or violations.
- (2) The known dollar value of the discrepancies or violations.
- (3) The method of computing the dollar value.
- (4) Further actions to be taken or sanctions to be imposed by the department.

(5) Any actions required of the provider.

b. The provider shall have 15 days after the date of the notice to appeal to the contract owner.

152.4(3) Sanctions. The following sanctions may be imposed on providers based on the grounds specified in subrule 152.4(1):

a. A term of probation for provision of foster care services.

b. Termination from participation in the provision of foster care services.

c. Suspension from provision of foster care services.

d. Suspension or withholding of payments to the provider.

e. Review of 100 percent of the provider's claims before payment.

f. Referral to the appropriate state licensing board for investigation.

g. Referral of the matter to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.

h. Suspension of foster care services licensure.

i. Termination of foster care services licensure.

j. Reduction of payment to 75 percent of the current rate for failure to submit the cost report or cost report clarifications timely.

k. Termination of the provider's contract for failure to submit the report within six months of the end of the fiscal year.

152.4(4) Imposition and extent of sanction. The department shall determine the sanction to impose. The following factors shall be considered in determining the sanction or sanctions to be imposed:

a. Seriousness of the offense.

b. Extent of violations.

c. History of prior violations.

d. Prior imposition of sanctions.

e. Prior provision of technical assistance.

f. Pattern of failure to follow program rules.

g. Whether a lesser sanction will be sufficient to remedy the problem.

h. Actions taken or recommended by peer review groups or licensing bodies.

152.4(5) Scope of sanction.

a. The sanction may be applied to all known affiliates of a provider. Each decision to include an affiliate shall be made on a case-by-case basis after giving due regard to all relevant factors and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated when the conduct was committed in the course of official duty or was effectuated with the knowledge or approval of that person.

b. When there are grounds for sanction pursuant to subrule 152.4(1) against a provider facility, campus, or site, the department may suspend or terminate the provision of foster care services by:

(1) The provider; or

(2) The specific facility, campus, or site; or

(3) Any individual within the provider's organization who is responsible for the violation.

c. No provider shall submit claims for payments to the department for any services provided by any facility, campus, site, or person within the organization that has been suspended or terminated from provision of foster care services, except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster care services shall preclude the submission of claims to the department for payment for any services provided after suspension or termination, whether submitted personally or through the provider.

152.4(6) Suspension or withholding of payments pending a final determination. When the department has notified a provider of a violation pursuant to paragraph 152.3(5) "b" or subrule 152.4(2) and has demanded repayment of an identified overpayment, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

152.4(7) Notice of sanction. When a provider has been sanctioned, the department shall notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

[ARC 2885C, IAB 1/4/17, effective 3/1/17; ARC 6857C, IAB 2/8/23, effective 4/1/23]

441—152.5(234) Adverse actions. Notice of adverse actions shall be given in accordance with 441—Chapter 16. The right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.

[ARC 2885C, IAB 1/4/17, effective 3/1/17; ARC 6857C, IAB 2/8/23, effective 4/1/23]

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CHAPTER 1
ADMINISTRATION

MISSION STATEMENT

The department's mission is to achieve compliance through education, regulation, and due process for a safe and healthy Iowa.

481—1.1(10A) Organization.

1.1(1) *Overview of the department.* The Iowa department of inspections and appeals is established by Iowa Code sections 10A.101 to 10A.802. The chief executive officer of the department is the director of the department of inspections and appeals, who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) *Appointment of deputy.* The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) *Organization of department.* The department is organized into divisions which are further divided into bureaus and units.

1.1(4) *Director's duties.* The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) *Deputy director's duties.* The deputy director serves as the principal deputy to the director. The deputy director represents the director in various capacities as directed.

1.1(6) *Issuance of subpoenas.* The director, or designee of the director, shall have the authority to issue subpoenas in accordance with the provisions of Iowa Code sections 10A.104(6) and 17A.13. In connection with audits, appeals, investigations, inspections, hearings, and any other permissible matters conducted by the department, the director, or designee of the director, may, upon the written request of a department employee or on the director's own initiative:

a. Issue subpoena duces tecum for the production and delivery of books, papers, records and other real evidence; and

b. Issue subpoenas for the appearance of persons to provide statements, statements under oath and depositions.

1.1(7) *Contents of subpoenas.* Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. The date, time and location for the appearance of the person;

c. A description of the books, papers, records or other real evidence requested;

d. The date, time and location for production, inspections, or copying of the books, papers, records or other real evidence;

e. The signature and address of the director or designee;

f. The name, address and telephone number of a department employee who can be contacted for purposes of providing clarification or assistance in compliance with the subpoena;

g. The date of issuance; and

h. A return of service.

1.1(8) *Motions to quash or modify subpoena.* A person who desires to challenge a subpoena directed to that person must, within ten days after service of the subpoena, or before the time specified for compliance, if such time is less than ten days, file with the director a motion to quash or modify the subpoena. Upon receipt of a timely motion to quash or modify a subpoena, the director or the director's designee may issue a decision or request an administrative law judge to issue a decision. Oral argument may be scheduled and conducted at the discretion of the director or the director's designee or the administrative law judge. The director or the director's designee or the administrative law judge may quash or modify the subpoena, deny the motion, or issue other appropriate orders. A person aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the director by serving the director, either in person or by certified mail, a notice of

appeal within ten days after service of the decision of the administrative law judge. The director's or the director's designee's decision is final for purposes of judicial review.

1.1(9) Failure to comply with subpoena. If the person to whom the subpoena is directed refuses or fails to obey the subpoena, the director, or the director's designee, may cause a petition to be filed in the Iowa district court seeking an order for the person's compliance. Failure to obey orders of that court shall render the person in contempt of the court and subject to penalties provided for that offense.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.2(10A) Definitions. The definitions set forth in Iowa Code section 10A.101 are incorporated herein.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.3(10A) Administration division. This division provides administrative support to the department, including fiscal, policy and planning, information technology, and public information. This division negotiates and provides oversight for compacts entered into between the state of Iowa and Indian tribes located in the state. The division also inspects and licenses the following:

1. Social and charitable gambling pursuant to Iowa Code chapter 99B;
2. Food establishments, including but not limited to restaurants, vending machines, mobile food units, food processing plants, and home food processing plants;
3. Hotels.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 3768C, IAB 4/25/18, effective 5/30/18; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.4(10A) Investigations division. The investigations division of the department conducts criminal, civil, and administrative investigations of fraud and misconduct. The division also conducts audits of health care facilities. Staff within the division work closely with federal, state, and local partners in identifying fraud, waste, and abuse and, where appropriate, presenting cases for criminal prosecution.

1.4(1) Units of the division. The division is comprised of the following units.

a. Audit unit. The audit unit audits health and human services health care facilities to review and verify facility resident billing and personal allowance accounts and to determine whether state billings accurately reflect the health care facility census. The unit audits local department of human services offices to review and verify whether administrative expense claims and official receipts are in accordance with the criteria set forth in 2 CFR Part 200 and state law.

b. Economic fraud control bureau (EFCB). The economic fraud control bureau investigates recipient public assistance fraud and supplemental nutrition assistance program (SNAP) trafficking. Division staff investigate suspected fraud and assist the department of human services to determine eligibility for public assistance. Division staff may conduct investigations relative to the administration of any other state or federal benefit assistance program. Division staff may also conduct investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

c. Medicaid fraud control unit (MFCU). The Medicaid fraud control unit investigates allegations of fraud committed by providers against the Medicaid program as well as fraud in the administration of the Medicaid program. MFCU also investigates abuse, neglect or other crimes committed upon residents in care facilities or related programs that receive funding from the Medicaid program.

d. Public assistance debt recovery unit (PADRU). The public assistance debt recovery unit investigates and initiates collections of overpayment debts owed to the department of human services.

1.4(2) Peace officer status. Pursuant to Iowa Code section 10A.403, investigators assigned to the division shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in Iowa Code section 10A.402(5). An investigator shall not carry a weapon to perform responsibilities as described in this subrule.

This rule is intended to implement Iowa Code sections 10A.401 to 10A.403.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 3769C, IAB 4/25/18, effective 5/30/18; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.5(10A) Health facilities division. This division conducts inspections and investigations, including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospice programs, and health care facilities.
2. Inspections and other licensing procedures relative to hospice programs, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.
5. Inspections and certification of elder group homes, assisted living programs, and adult day services programs.
6. Registration of boarding homes.
7. Investigation of dependent adult abuse in facilities and programs.

[ARC 8431B, IAB 12/30/09, effective 2/3/10]

481—1.6(10A) Administrative hearings division. The division conducts contested case hearings for state agencies, departments, boards, and commissions. In addition, the division conducts contested case hearings for some counties and municipalities.

1.6(1) All hearings are governed by Iowa Code chapter 17A, other applicable statutes, including the transmitting agency's enabling statute and the statute authorizing the action taken, applicable agency rules, and the department's administrative rules found at 481—Chapters 9 to 11.

1.6(2) The administrator shall coordinate the division's conduct of all hearings.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director.

[ARC 8431B, IAB 12/30/09, effective 2/3/10]

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 8A, subchapter IV, 80, 88, 91C, 96, and 97B in accordance with administrative rules promulgated by the employment appeal board.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.9(10A,237) Child advocacy board. The child advocacy board consists of nine members appointed by the governor, subject to confirmation by the senate. This board administers foster care review and the court appointed special advocate programs, as defined in Iowa Code section 237.18, in accordance with administrative rules promulgated by the board.

[ARC 8431B, IAB 12/30/09, effective 2/3/10]

481—1.10(10A,13B) State public defender. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under Iowa Code section 811.1A or Iowa Code chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to Iowa Code chapter 908.

[ARC 8431B, IAB 12/30/09, effective 2/3/10]

481—1.11(10A,99D,99F) Racing and gaming commission. The Iowa racing and gaming commission regulates pari-mutuel horse racing, simulcasting, gambling structures, excursion gambling boats, racetrack enclosures, sports wagering, and fantasy sports contests in Iowa. The commission, whose five members are appointed by the governor, administers the laws and rules associated with these industries to maintain confidence in the industries and to ensure the integrity of licensed participants and operations for the state and the wagering public. In performing its duties, the commission investigates the eligibility of applicants for licensure. The commission adopts standards for the licensing of racing industry occupations, as well as standards for the operation of all race meetings and facilities. The commission also adopts standards for the operation and licensing of pari-mutuel and simulcast wagering, gambling structures, excursion gambling boats, racetrack enclosures, sports wagering, and fantasy sports contests.

[ARC 8431B, IAB 12/30/09, effective 2/3/10; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—1.12(10A,68B) Consent for the sale of goods and services. An official or employee of the department shall not directly or indirectly sell or lease any goods, real estate, or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code section 68B.4 and rule 351—6.11(68B).

[ARC 6862C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapters 10A, 13B, 68B, 99D, 99F, and 237.

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[Filed ARC 3769C (Notice ARC 3649C, IAB 2/28/18), IAB 4/25/18, effective 5/30/18]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 2
PETITIONS FOR RULE MAKING

481—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at the Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS	
Petition by (Name of Original Petitioner) for (the adoption, amendment, or repeal) of rules relating to (state subject matter).	}
	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 481—2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The agency may deny a petition because it does not substantially conform to the required form.

[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

481—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the director of the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—2.4(17A) Agency consideration.

2.4(1) Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the

specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/6/87, Notice 10/8/86—published 2/25/87, effective 4/1/87]

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 3
DECLARATORY ORDERS

The department of inspections and appeals adopts, with the following amendments, the declaratory orders segment of the Uniform Rules on Agency Procedure, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

481—3.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, insert “department”. In lieu of the words “(designate office)”, insert “the Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.2(17A) Notice of petition. In lieu of the words “ ___ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “department”.

481—3.3(17A) Intervention.

3.3(1) In lieu of the words “within ___ days”, insert “within 15 days”. Strike the words “(after time for notice under X.2(17A))”. In lieu of the number “X.8(17A)”, insert “3.8(17A)”.

3.3(2) In lieu of the words “(designate agency)”, insert “the department”.

3.3(3) In lieu of the words “(designate office)”, insert “the Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083”. In lieu of the words “(designate agency)”, insert “department”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

481—3.4(17A) Briefs. In lieu of the words “(designate agency)”, insert “department”.

481—3.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083”.

481—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words “(specify office and address)”, insert “the Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083”. In lieu of the words “(agency name)”, insert “department”.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 481—10.12(17A)”.

481—3.7(17A) Consideration. In lieu of the words “(designate agency)”, insert “department”.

481—3.8(17A) Action on petition.

3.8(1) In lieu of the words “(designate agency head)”, insert “director”.

3.8(2) In lieu of the words “(contested case uniform rule X.2(17A))”, insert “rule 481—10.1(10A)”.

481—3.9(17A) Refusal to issue order.

3.9(1) In lieu of the words “(designate agency)”, insert “department”.

481—3.12(17A) Effect of a declaratory order. In lieu of the words “(designate agency)”, insert “department”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/6/87, Notice 10/8/86—published 2/25/87, effective 4/1/87]

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING
[481—Chapter 4 renumbered as 481—Chapter 10, effective 3/16/88.]

The department of inspections and appeals adopts, with the following amendments, the agency procedure for rule making segment of the Uniform Administrative Rules, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

481—4.3(17A) Public rule-making docket.

4.3(2) *Anticipated rule making.* In lieu of the words “(commission, board, council, director)” insert “director”.

481—4.4(17A) Notice of proposed rule making.

4.4(3) *Notices mailed.* In lieu of the words “(specify time period)” insert “one calendar year”.

481—4.5(17A) Public participation.

4.5(1) *Written comments.* Strike the words “(identify office and address) or”.

4.5(5) *Accessibility.* In lieu of the words “(designate office and telephone number)”, insert “the department at (515)281-7102”.

[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—4.6(17A) Regulatory analysis.

4.6(2) *Mailing list.* In lieu of the words “(designate office)”, insert “Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319”.

481—4.10(17A) Exemptions from public rule-making procedures. Rescinded ARC 6862C, IAB 2/8/23, effective 3/15/23.

481—4.11(17A) Concise statement of reasons.

4.11(1) *General.* In lieu of the words “(specify the office and address)” insert “Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319”.

481—4.13(17A) Agency rule-making record.

4.13(2) *Contents.* Amend paragraph “c” by inserting “director” in lieu of “(agency head)”.

These rules are intended to implement Iowa Code chapter 17A and section 25B.6.

[Filed 1/22/88, Notice 12/16/87—published 2/10/88, effective 3/16/88]

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
[481—Chapter 5 renumbered as 481—Chapter 11, IAB 2/10/88, effective 3/16/88]

The department of inspections and appeals adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published on the Iowa general assembly’s website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

481—5.1(17A,22) Definitions. As used in this chapter:

“*Agency.*” In lieu of the words “(official or body issuing these rules)”, insert “department of inspections and appeals”.

“*Custodian*” means an agency, which owns and exercises control over public records. The originating agency, if any, is the custodian of records which are used to perform work or a service for the originating agency.

“*Originating agency*” means any government agency which has requested the department to perform work or a service on its behalf. An originating agency retains custody of all records provided by the originating agency to the department.

481—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “director”. In lieu of the words “(insert agency name and address)”, insert “Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319”.

5.3(2) Office hours. In lieu of the words “(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. Monday through Friday except legal holidays.”

5.3(7) Fees.

c. Supervisory fee. In lieu of “(specify time period)” insert “one hour”.

481—5.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words “(designate office)” insert “the originating agency, or to the director’s office”.

481—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 481—5.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.
[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—5.10(17A,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to those officers, employees, and agents of the department or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
2. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
3. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
4. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
5. Any disclosure specifically authorized by the statute under which the record was collected or maintained.
6. Information transferred to any originating agency when inspections and appeals department has completed the authorized audit, investigation, or inspection.

481—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 481—5.7(17A,22).

5.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.11(3) Obtaining information from a third party. The department of inspections and appeals occasionally requests personally identifiable information from third parties during the course of its authorized audits, investigations, hearings or inspections. Requests to third parties for this information involve the release of confidential identifying information and shall be made in accordance with the department’s pertinent statutory authority.

5.11(4) Child support recovery unit. Information shared by or with the child support recovery unit of the department of human services pursuant to Iowa Code chapter 252J shall only be used as set forth in Iowa Code section 252J.2(4).

[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 481—5.6(17A,22). The department need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b. Records need not be disclosed to the subject when they are the work product of an attorney, or a hearing officer’s personal notations to be used by the hearing officer and not intended for public dissemination; or they are otherwise privileged.
- c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5).)

d. Others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject.
[ARC 6802C, IAB 1/11/23, effective 2/15/23; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—5.13(17A,22) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(1) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b.* Tax records made available to the agency.
- c.* Exempt records under Iowa Code section 22.7.
- d.* Minutes of closed meetings of a government body. (Iowa Code section 21.5(5))
- e.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “*d.*”
- f.* Those portions of department staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3)
- g.* Confidential records are also described in the rules of each division.
- h.* Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.
- i.* Any other records made confidential by law.
Iowa Code sections 10A.105, 22.7, 135B.12, 135C.19, 217.30, and 272C.6 contain specific authority.

5.13(2) Reserved.
[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—5.14(17A,22) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 481—5.4(17A,22). If the department initially determines that it will release these records, the department may notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).
[ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—5.15(17A,22) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

481—5.16(17A,22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

5.16(1) Rule making. Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information.

5.16(2) Administrative hearings division. Contested case records are maintained in electronic files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case file.

Records are collected by authority of Iowa Code chapter 10A. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded digitally or in written transcripts.

5.16(3) Appellate defender. By authority of Iowa Code chapter 13B, the appellate defender maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases, and are maintained in paper and electronic files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section 915.36, the appellate defender shall not disclose the names of child victims. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

Litigation files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain material which is confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

5.16(4) Investigations division. Files are stored electronically using encrypted cloud storage and state-administered servers. Electronic records are retrievable using a name, social security number, state identification number, or other program identifier, as applicable.

All records are collected and stored by the investigations division pursuant to Iowa Code section 10A.402.

Comparisons between record systems are explained in rule 481—90.8(10A).

5.16(5) Health facilities division. Records of the health facilities division are collected pursuant to Iowa Code sections 10A.702, 235E.2, and other entity- and program-specific authority. Records are maintained in paper and electronic files and may contain personally identifiable information. Records may be compared with information on data processing systems, including the direct care worker registry, and may be retrievable by personal identifier. A general list of records considered confidential is available in rule 481—50.8(10A).

[ARC 6862C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 10A.105, 22.7, 22.11, 135B.12, 135C.19, 217.30 and 272C.6.

[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

[Filed emergency 11/30/95—published 12/20/95, effective 11/30/95]

[Filed ARC 6802C (Notice ARC 6609C, IAB 11/2/22), IAB 1/11/23, effective 2/15/23]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 7
CONSENT FOR THE SALE OF GOODS
AND SERVICES
Rescinded **ARC 6862C**, IAB 2/8/23, effective 3/15/23

CHAPTER 8
LICENSING ACTION FOR NONPAYMENT OF CHILD SUPPORT AND PROHIBITION
OF LICENSING ACTION FOR STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH
AGREEMENT FOR PAYMENT OF OBLIGATION

481—8.1(252J) Certificates of noncompliance. The department shall suspend, revoke, or deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

8.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

8.1(2) The effective date of the revocation or suspension of a license, or denial of the issuance or renewal of a license as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

8.1(3) The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or licensee.

8.1(4) Licensees and license applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

8.1(5) All department fees for license applications, license renewal or reinstatement must be paid by licensees or applicants before a license will be issued, renewed or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

8.1(6) A licensee or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation or suspension, or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.1(7) The department shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license or the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapter 252J.

[ARC 5187C, IAB 9/23/20, effective 10/28/20; ARC 6862C, IAB 2/8/23, effective 3/15/23]

481—8.2(272C) Licensing actions against individuals who default or are delinquent on student loan debt or on a related service obligation prohibited. The department shall not deny the issuance or renewal of a license or suspend or revoke a license to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

This rule is intended to implement Iowa Code section 272C.4.

[ARC 5187C, IAB 9/23/20, effective 10/28/20]

481—8.3(261) Suspension or revocation of a license. Rescinded **ARC 5187C**, IAB 9/23/20, effective 10/28/20.

[Filed emergency 11/30/95—published 12/20/95, effective 11/30/95]

[Filed 8/4/00, Notice 6/28/00—published 8/23/00, effective 9/29/00]

[Filed ARC 5187C (Notice ARC 5106C, IAB 7/29/20), IAB 9/23/20, effective 10/28/20]

[Filed ARC 6862C (Notice ARC 6741C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 11
PROCEDURE FOR CONTESTED CASES INVOLVING PERMITS
TO CARRY WEAPONS AND ACQUIRE FIREARMS

481—11.1(17A,724) Definitions.

“*Agency*” means the commissioner of public safety or the sheriff of the county in which the aggrieved party resides.

“*Applicant*” means a person who has applied for a permit to carry weapons or acquire firearms.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5).

“*Division*” means the division of administrative hearings of the Iowa department of inspections and appeals.

“*Party*” means each person or agency named or admitted as a party.

“*Permittee*” means a person who has received a permit to carry weapons or acquire firearms.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.2(724) Appeals. An applicant or permittee may appeal a decision by an agency to deny an application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms.

11.2(1) *Written appeal.* The appeal shall be in writing or filed electronically pursuant to 481—Chapter 16 and should state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant’s or permittee’s receipt of the agency’s decision, the applicant or permittee shall file the appeal, a copy of the agency’s written decision, and a fee of \$10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319, or electronically pursuant to 481—Chapter 16.

11.2(3) *Service on the agency.* The applicant or permittee shall serve a copy of the appeal on the agency at the time the appeal is filed with the division.

11.2(4) *Denial of appeal.* The division may deny any appeal that does not meet each of the requirements in subrules 11.2(1) to 11.2(3).

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.3(17A,724) Notice of hearing. The division shall prepare and serve the notice of hearing.

11.3(1) In addition to the information set forth in Iowa Code section 17A.12(2), the notice of hearing shall contain the following information:

- a. Identification of the parties;
- b. Reference to the procedural rules governing the contested case proceeding;
- c. Identification of the administrative law judge, including the judge’s contact information;
- d. Requirements for the filing and service of a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding;
- e. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment;
- f. Notification that the applicant or permittee shall be required to pay the agency’s reasonable attorney fees and court costs if the agency’s decision is affirmed in the contested case proceeding or in subsequent judicial review of the proceeding, or if the applicant or permittee withdraws or dismisses the contested case proceeding or subsequent judicial review action; and
- g. Notification that the agency shall be required to pay the applicant’s or permittee’s reasonable attorney fees and court costs if it is determined in the contested case proceeding or in subsequent judicial review of the proceeding that the applicant or permittee is eligible to be issued or to possess the permit that was denied, suspended, or revoked.

11.3(2) Service of the notice of hearing shall be accomplished by first-class mail.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.4(17A,724) Agency record.

11.4(1) Upon receipt of a copy of the notice of hearing, the agency shall file with the division:

- a. A copy of all documents used by the agency in reaching the decision; and
- b. A form identifying the name, address, and telephone number of the agency's contact person or attorney representative.

11.4(2) The agency shall provide to the applicant or permittee a copy of all documents used by the agency in reaching the decision.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.5(17A) Contested case hearing. The hearing shall be conducted pursuant to the standards established in Iowa Code chapter 17A for contested case hearings. The hearing shall be held by telephone conference call, unless a party to the proceeding requests an in-person hearing from the administrative law judge no later than five days before the hearing. All in-person hearings shall be held at the division's headquarters in Des Moines, Iowa. If the administrative law judge grants an in-person hearing, the administrative law judge may allow one party to appear by telephone.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.6(17A,724) Service and filing of documents. Service and filing of documents shall be in accordance with rule 481—10.12(17A).

This rule is intended to implement Iowa Code section 724.21A.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 1993C, IAB 5/27/15, effective 7/1/15; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.7(17A) Witness lists and exhibits. If a party fails to serve on all parties and file with the division a witness list or any exhibit as set forth in the notice of hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 1993C, IAB 5/27/15, effective 7/1/15; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.8(17A) Evidence. Evidence shall be governed by rule 481—10.21(17A).

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.9(17A) Withdrawals and dismissals. A request for withdrawal or dismissal of the appeal may be made with the division prior to the hearing. Either request must be in writing or secured on the record.

11.9(1) Withdrawals. An applicant or permittee who requested a contested case proceeding may request a withdrawal of the appeal. Upon receipt of a request for withdrawal of the appeal, the administrative law judge shall issue an order dismissing the appeal and addressing the award of attorney fees pursuant to rule 481—11.11(10A).

11.9(2) Dismissals. An agency may request a dismissal of the appeal by agreeing to grant the entire relief sought by the applicant or permittee. The administrative law judge shall review a request for dismissal to determine whether it grants all relief requested in the appeal. If the request grants all relief requested in the appeal, the administrative law judge shall issue an order dismissing the appeal, ordering the agency to grant the relief requested, determining that no attorney fees are to be awarded, and closing the case.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

481—11.10(17A) Default. If a party fails to appear after proper service of notice, the administrative law judge may enter a default order against the party or may proceed with the hearing and make a decision in the absence of the party. The default order or decision made in the absence of the party shall address the award of attorney fees pursuant to rule 481—11.11(10A).

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

481—11.11(10A,724) Attorney fees, court costs, and contested case costs.

11.11(1) Attorney fees. In a decision rescinding or sustaining the agency's denial, suspension, or revocation of the permit or otherwise granting a request to withdraw or dismiss the appeal, the administrative law judge shall determine whether a party is entitled to an award of attorney fees

consistent with paragraph 11.11(1)“a” or “b.” If a party is entitled to an award, the decision shall inform the parties of the applicable procedure provided in paragraph 11.11(1)“c” for determining the amount of such an award unless the administrative law judge determines the amount of an award in the decision as provided for in paragraph 11.11(1)“f.”

a. If the administrative law judge rescinds the agency’s denial, suspension, or revocation of the permit and determines the applicant or permittee is eligible to be issued or to possess the permit, the applicant or permittee shall be awarded any reasonable attorney fees. A dismissal of the appeal at the request of the agency under subrule 11.9(2) is not a determination that the applicant or permittee is eligible to be issued or to possess the permit and does not entitle the applicant or permittee to an award of attorney fees. An applicant or permittee who is not represented by an attorney in the contested case proceeding is not entitled to an award of attorney fees.

b. If the administrative law judge affirms the agency’s denial, suspension, or revocation of the permit or grants the applicant’s or permittee’s request to withdraw or dismiss the appeal, the agency shall be awarded any reasonable attorney fees. Such an award to the agency shall be made to the political subdivision of the state representing the sheriff or to the state department representing the commissioner as applicable. An agency is not entitled to an award of attorney fees if the agency requests dismissal of the appeal under subrule 11.9(2) or if the agency is not represented by an attorney in the contested case proceeding.

c. Within 14 days of the date of a decision in which the administrative law judge determines that a party is entitled to an award of attorney fees, the party shall file a request for attorney fees and documentation supporting the request or a joint statement with the other party agreeing to the amount of reasonable attorney fees. Within 7 days of the filing of a request for attorney fees, the other party may file a resistance, including any relevant evidence, or a statement agreeing to the requested attorney fees. Upon request of either party or on the administrative law judge’s own motion, a hearing may be scheduled on the issue of the attorney fee award.

d. If the party fails to file a request for attorney fees or a joint statement within 14 days, the administrative law judge shall issue an order determining that no attorney fees are awarded in the case. If the parties agree to the amount of reasonable attorney fees to be awarded, the administrative law judge shall issue an order awarding attorney fees consistent with the agreement. In all other cases, the administrative law judge shall issue a written order determining the reasonable attorney fees in the case.

e. The administrative law judge’s decision is not final for purposes of rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A until the administrative law judge has issued a written decision determining the amount of any attorney fees to be awarded under this subrule or determining that no attorney fees are to be awarded.

f. If an application for rehearing under rule 481—11.14(17A) is denied, no additional attorney fees shall be awarded to either party. If an application for rehearing is granted, all the provisions of this subrule apply to the rehearing proceedings unless the only relief sought on rehearing relates to the attorney fee award. If the only relief sought relates to the attorney fee award, the order granting the application for rehearing shall provide that a party opposing the requested relief may file a resistance, including any relevant evidence, within 7 days of the date of the order and shall schedule a hearing or provide that a hearing may be scheduled upon the request of either party. In such a case, the administrative law judge shall issue a single final decision regarding the attorney fee award.

g. Any attorney fees awarded under this subrule shall be paid to the awarded party within 30 days of the issuance of an order determining the amount of attorney fees awarded unless an interested party seeks rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A or the parties agree to an alternative payment schedule. If a party seeks rehearing under rule 481—11.14(17A), the attorney fees shall be paid within 30 days of the denial of the application for rehearing or of any final decision awarding attorney fees after the grant of an application for rehearing. If a party seeks judicial review under Iowa Code chapter 17A, the attorney fee award shall be stayed pending resolution of the judicial review action. A party awarded attorney fees is responsible for taking any necessary action to enforce the award if payment is not made.

11.11(2) Court costs and attorney fees on judicial review. Any request for the award of court costs or for attorney fees incurred after the entry of an order determining reasonable attorney fees may only be made to the court in a judicial review action under Iowa Code chapter 17A, unless a party requests rehearing under rule 481—11.14(17A), in which case reasonable attorney fees may be awarded by the administrative law judge related to the request for rehearing consistent with paragraph 11.11(1)“f.”

11.11(3) Contested case costs. Costs of the division in conducting a contested case proceeding arising out of a decision of the commissioner of public safety shall be charged to the department of public safety pursuant to Iowa Code section 10A.801(9).

This rule is intended to implement Iowa Code sections 10A.801 and 724.21A.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17; ARC 6861C, IAB 2/8/23, effective 3/15/23]

481—11.12(724) Probable cause. Probable cause to deny an initial or renewal application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms means a reasonable ground exists for supposing that the basis for the denial, suspension or revocation is well-founded.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.13(724) Clear and convincing evidence. Clear and convincing evidence means there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.14(17A) Rehearing. A request for rehearing may be filed in accordance with Iowa Code section 17A.16(2).

This rule is intended to implement Iowa Code sections 724.21A and 17A.16.

[ARC 1993C, IAB 5/27/15, effective 7/1/15; ARC 3217C, IAB 7/19/17, effective 8/23/17; ARC 6861C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code section 724.21A.

[Filed Emergency ARC 9299B, IAB 12/29/10, effective 1/1/11]

[Filed ARC 9400B (Notice ARC 9298B, IAB 12/29/10), IAB 3/9/11, effective 4/13/11]

[Filed ARC 1993C (Notice ARC 1934C, IAB 4/1/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 3217C (Notice ARC 3073C, IAB 5/24/17), IAB 7/19/17, effective 8/23/17]

[Filed ARC 6861C (Notice ARC 6745C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

INSPECTIONS DIVISION

CHAPTER 30

FOOD AND CONSUMER SAFETY

481—30.1(10A,137C,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for social and charitable gambling and amusement devices. Separate chapters have been established for the administration of social and charitable gambling (481—Chapters 100 to 103, 106, and 107) and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and chapters 137C and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 3768C, IAB 4/25/18, effective 5/30/18; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.2(10A,137C,137F) Definitions. If both the 2017 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137F) define a term, the definition in rule 481—30.2(10A,137C,137F) shall apply.

“Bed and breakfast home” means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

“Bed and breakfast inn” means the same as defined in Iowa Code section 137C.2.

“Catering” means the preparation of food for distribution to an individual, business or organization for exclusive service to the individual’s, business’s or organization’s nonpaying guests, employees or members.

“Certified wild-harvested mushroom identification expert” means an individual who has within the last three years successfully completed a wild-harvested mushroom identification training program provided by an accredited college, university, or state mycological society. The training program must include a component of actual identification of physical specimens or simulations of mushroom species. A document must be issued by an accredited college, accredited university, or state mycological society certifying the individual’s successful completion of the wild-harvested mushroom identification training program and specifying the species of wild mushrooms the individual is qualified to identify.

“Commissary” means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment’s own outlets.

“Contractor” means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C or 137F. A list of contractors is maintained on the department’s website.

“Cottage food” means the production and sale of food produced at a private residence other than time/temperature control for safety food as provided in Iowa Code section 137F.20 as enacted by 2022 Iowa Acts, House File 2431, section 10, and food for resale that is not time/temperature control for safety food. “Cottage food” includes home-processed and home-canned pickles, vegetables, or fruits that have a finished equilibrium pH value of 4.60 or lower or a water activity value of 0.85 or less for which each batch has been measured by a pH meter or a water activity meter and each container that is sold or offered for sale contains the date the food was processed and canned. “Cottage food” does not include any of the following:

1. Milk or milk products regulated under Iowa Code chapters 192 and 194.
2. Meat, meat food products, poultry, or poultry food products regulated under Iowa Code chapter 189A.

“Criminal offense” means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

“*Critical violation*” means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

“*Cultivated mushroom*” means a mushroom grown through a process in which the grower inoculates a substrate (logs, beds, straw, etc.) with a known strain or species of mushroom spawn in a dedicated space, whether outdoors or indoors, that is under the control of the grower, for the purpose of fruiting mushrooms.

“*Department*” means the department of inspections and appeals.

“*Event*” means a significant occurrence or happening sponsored by a civic, business, governmental, community, or veterans organization and may include an athletic contest. For example, an event does not include a single store’s grand opening or sale.

“*Farmers market*” means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

“*Farmers market time/temperature control for safety food license*” means a license for a temporary food establishment that sells time/temperature control for safety foods at farmers markets. A separate annual farmers market time/temperature control for safety food license is required for each county in which the licensee sells time/temperature control for safety foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers. “Farmers market time/temperature control for safety food license” does not include a temporary food establishment that sells packaged time/temperature control for safety food items from a licensed source at farmers markets.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not time/temperature control for safety foods.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food processing establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market if unpackaged time/temperature control for safety foods are not sold or distributed from the premises.
6. Premises of a residence in which food is produced pursuant to Iowa Code section 137F.20 as enacted by 2022 Iowa Acts, House File 2431, section 10.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home or private party where a personal chef or hired cook is providing food preparation services to a client and the client’s nonpaying guests.
9. A private home that receives catered or home-delivered food.
10. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
11. Supply vehicles or vending machine locations.
12. Establishments that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.
13. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
 - Premises of a beer manufacturer, distributor, or wholesaler under Iowa Code chapter 123;

- Premises of a wine manufacturer, distributor, or wholesaler under Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

14. Premises or operations that are exclusively engaged in the processing of milk and milk products, are regulated by Iowa Code sections 192.107 and 194.1, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

15. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

16. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

17. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:

- The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

18. A stand operated by a minor.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises of a beer manufacturer, distributor, or wholesaler under Iowa Code chapter 123;
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

3. Premises or operations that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

4. Premises or operations that are exclusively engaged in the processing of milk or milk products, are regulated by Iowa Code sections 192.107 and 194.1, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

5. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

6. Premises or operations that are exclusively engaged in the preparation or processing of Siluriformes, including catfish, and are regulated and inspected by the United States Department of Agriculture under a federal grant of inspection.

7. Premises that are a home food processing establishment pursuant to Iowa Code chapter 137D.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

"Hotel" means the same as defined in Iowa Code section 137C.2.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C or 137F.

"Mobile food unit" means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Patrol dog" means a dog that is accompanying a law enforcement officer or security officer.

"Personal chef" or *"hired cook"* means a person who provides food preparation services in a private home or at a private party for a client and the client's nonpaying guests. "Personal chef" or "hired cook" does not include a person who provides the ingredients intended to be used in food preparation.

“*Pet dog*” means a dog that does not meet the definition of a “patrol dog” or a “service animal” as defined in the Code of Federal Regulations, Title 28, Part 36.

“*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving foods that are not time/temperature control for safety foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

“*Retail food establishment*” means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.

“*Revoke*” means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

“*Stand operated by a minor*” means a stand or other facility operated by a person or persons under the age of 18 at which food is sold directly to consumers that is not time/temperature control for safety food or an alcoholic beverage and that operates on a temporary and occasional basis on private property with the permission of the owner of the property.

“*Suspend*” means to render a license issued under Iowa Code chapter 137C or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

“*Temporary food establishment*” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event.

“*Time/temperature control for safety food*” means a food that requires time and temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

“*Transient guest*” means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

“*Unattended food establishment*” means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public. “Controlled entry,” for the purposes of the definition of “unattended food establishment,” means selective restriction or limitation of access to a place or location.

“*Vending machine*” means a self-service device which, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged foods that are not time/temperature control for safety foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. “Panned candies” are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

“*Vending machine location*” means the room, enclosure, space, or area where one or more vending machines are installed and operated, including the storage areas on the premises that are used to service and maintain the vending machine.

“*Wild-harvested mushroom*” means a fresh mushroom that has been found or foraged in the natural environment and has not been processed (e.g., dried or frozen). “Wild-harvested mushroom” does not include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

This rule is intended to implement Iowa Code sections 10A.104 and 137C.8 and chapter 137F. [ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 4731C, IAB 10/23/19, effective 11/27/19; ARC 5119C, IAB 7/29/20, effective 9/2/20; ARC 5353C, IAB 12/30/20, effective 2/3/21; ARC 5354C, IAB 12/30/20, effective 2/3/21; ARC 5843C, IAB 8/11/21, effective 9/15/21; ARC 5845C, IAB 8/11/21, effective 9/15/21; ARC 6568C, IAB 10/5/22, effective 11/9/22; ARC 6859C, IAB 2/8/23, effective 3/15/23]

481—30.3(137C,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or

from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

30.3(1) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market time/temperature control for safety food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(2) *Refunds.* License fees are refundable only if the license is surrendered to the department prior to the effective date of the license and only as follows:

- a. License fees of \$67.50 or less are an application processing fee and are not refundable.
- b. If an on-site visit has not occurred, license fees of more than \$67.50 will be refunded less the \$67.50.
- c. If an on-site visit has occurred, the entire license fee is nonrefundable.

30.3(3) *License expiration.* A license is renewable and expires after one year, with the exception of a temporary food establishment license issued in conjunction with a single event at a specific location, which is valid for a period not to exceed 14 consecutive days.

30.3(4) *Posting of inspection reports, licenses, and registration tags.* A valid license and the most recent inspection report, along with any current complaint or reinspection reports, shall be posted no higher than eye level where the public can see them. The report shall not be posted in such a manner that the public cannot reasonably read the report. For example, the posting of a report behind a service area where the report can be seen but not easily read is not allowed. Vending machines shall bear a tag to affirm the license. For the purpose of this subrule, only founded complaint reports shall be considered complaints. Founded complaints shall be posted until either the mail-in recheck form has been submitted to the regulatory authority or a recheck inspection has been conducted to verify that the violations have been corrected.

30.3(5) *Documentation of gross sales.* The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by rule 481—30.4(137C,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

30.3(6) *License eligibility for renewal limited to 60 days after expiration.* A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. If a delinquent license is not renewed within 60 days, an establishment must apply for a new license and meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

This rule is intended to implement Iowa Code sections 10A.104 and 137C.8 and chapter 137F. [ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.4(137C,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food

and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) *Retail food establishments.* License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$250,000—\$150.
- b. For annual gross sales of \$250,000 to \$750,000—\$300.
- c. For annual gross sales of more than \$750,000—\$400.

30.4(2) *Food service establishments.* License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

- a. For annual gross sales of less than \$100,000—\$150.
- b. For annual gross sales of \$100,000 to \$500,000—\$300.
- c. For annual gross sales of more than \$500,000—\$400.

30.4(3) *Vending machines.* License fees for food and beverage vending machines are \$50 for the first machine and \$10 for each additional machine (Iowa Code section 137F.6).

30.4(4) *Hotels.* License fees for hotels shall be as set forth in Iowa Code section 137C.9.

30.4(5) *Mobile food units or pushcarts.* The license fee for a mobile food unit or a pushcart is \$250 (Iowa Code section 137F.6).

30.4(6) *Temporary food establishments.*

a. The fee for a temporary food establishment license issued for up to 14 consecutive days in conjunction with a single event is \$50 (Iowa Code section 137F.6).

b. The annual fee for a temporary food establishment license issued for multiple nonconcurrent events on a countywide basis during a calendar year is \$200 (Iowa Code section 137F.6). Temporary food establishments that operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(7) *Food processing plants including food storage facilities (warehouses).* For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$200,000—\$150.
- b. For annual gross sales of \$200,000 to \$2 million—\$300.
- c. For annual gross sales of more than \$2 million—\$500.

30.4(8) *Farmers market.* A person selling time/temperature control for safety food at a farmers market must pay an annual license fee of \$150 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(9) *Certificate of free sale or sanitation.* The fee for a certificate of free sale or sanitation is \$35 for the first certificate and \$10 for each additional identical certificate requested at the same time.

30.4(10) *Unattended food establishment.* The annual license fee for an unattended food establishment is based on the annual gross food and beverage sales (Iowa Code section 137F.6) as follows:

- a. Annual gross sales of less than \$100,000—\$75.
- b. Annual gross sales of \$100,000 or more—\$150.

30.4(11) *Events.* The license fee for an event is \$50, which shall be submitted with a license application to the appropriate regulatory authority at least 60 days in advance of the event. An “event” for purposes of this subrule does not include a function with ten or fewer temporary food establishments, a fair as defined in Iowa Code section 174.1, or a farmers market.

30.4(12) Voluntary inspection fee. The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9 and 137F.6.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 6568C, IAB 10/5/22, effective 11/9/22; ARC 6859C, IAB 2/8/23, effective 3/15/23]

481—30.5(137F) Penalty and delinquent fees.

30.5(1) Late penalty. Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall be renewed only if the license holder has provided documentation pursuant to subrule 30.3(5).

30.5(2) Penalty for opening or operating without a license. A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) Civil penalty for violations. A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,137F).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.6(137C,137F) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapter 137C or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9 and 137F.6.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.7(137F) Double licenses.

30.7(1) Any establishment that holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(3) A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1) “c”) and \$150 for its food service establishment license (rule 481—30.7(137F)).

30.7(4) The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant. The dominant form of business shall be deemed to be the business with higher annual gross sales. Food establishments that also process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license in addition to the food establishment license.

Regardless of the type of license, food processing plants shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 4731C, IAB 10/23/19, effective 11/27/19]

481—30.8(137C,137F) Inspection frequency.

30.8(1) Food establishments. Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 60 months. Very low risk food establishments will not have a routine inspection frequency.

30.8(2) Food processing plants. Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 60 months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(3) Food processing plants that store foods. Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 84 months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(4) Hotels. Hotels shall be inspected in accordance with Iowa Code chapter 137C.

30.8(5) Farmers market time/temperature control for safety food. Farmers market time/temperature control for safety food licensees shall be inspected at least once annually.

30.8(6) Temporary food establishments. Temporary food establishments issued an annual license pursuant to paragraph 30.4(6) “b” shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11 and 137F.10.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 6568C, IAB 10/5/22, effective 11/9/22; ARC 6859C, IAB 2/8/23, effective 3/15/23]

481—30.9(22) Examination of records.

30.9(1) Public information. Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director. Inspection reports are available for public viewing at www.food.dia.iowa.gov.

30.9(2) Confidential records. The following are examples of confidential records:

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
 - b. Health information related to foodborne illness complaints and outbreaks;
 - c. The name or any identifying information of a person who files a complaint with the department;
- and
- d. Other state or federal agencies’ records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

This rule is intended to implement Iowa Code chapters 137C, 137F and 22.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4731C, IAB 10/23/19, effective 11/27/19; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.10(17A,137C,137F) Denial, suspension, or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

30.10(1) Immediate suspension of license. To the extent not inconsistent with Iowa Code chapters 17A, 137C, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule

481—30.11(10A,137C,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

30.10(2) Criminal offense—conviction of license holder.

a. The department may revoke the license of a license holder who:

- (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
- (2) Is convicted of a felony as a result.

b. The department may suspend or revoke the license of a license holder who:

- (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
- (2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

d. The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,137F).

This rule is intended to implement Iowa Code chapters 17A, 137C and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.11(10A,137C,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 9, “Contested Cases.”

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—9.3(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3523C, IAB 12/20/17, effective 1/24/18; ARC 6568C, IAB 10/5/22, effective 11/9/22]

481—30.12(137F) Primary servicing laboratory. The primary servicing laboratory for the food and consumer safety bureau is the State Hygienic Laboratory at the University of Iowa created under Iowa Code section 263.7. If the laboratory is unable to perform laboratory services, the laboratory will assist in finding another laboratory with a preference toward laboratories that are in the FERN (Food Emergency Response Network) and have achieved ISO 17025 accreditation.

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D, and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

481—30.13(10A,137F) Cottage food.

30.13(1) Cottage food is exempt from all licensing, permitting, inspection, packaging, and labeling laws of the state if the food complies with all of the following:

a. The food does not require time/temperature control for safety. When it is not obvious whether a food requires time/temperature control for safety, the food producer must provide documentation that a food does not require time/temperature control for safety to the regulatory authority upon request.

b. The food is not a milk or milk product regulated under Iowa Code chapters 192 and 194.

c. The food is not a meat, meat food product, poultry, or poultry food product regulated under Iowa Code chapter 189A.

d. The food is not unpasteurized fruit or vegetable juice.

e. The food is produced in a private residence.

f. The food is sold and delivered by the producer directly to the consumer.

g. The cottage food is labeled or affixed with the following information:

(1) Information to identify the name and address, phone number, or electronic mail address of the person preparing the food.

(2) The common name of the food.

(3) The ingredients of the cottage food in descending order of predominance.

(4) The following statement: “This product was produced at a residential property that is exempt from state licensing and inspection.”

(5) If the cottage food contains one or more major food allergens, an additional allergen statement identifying each major allergen contained in the food by the common name of the allergen.

(6) If the food is home-processed and contains home-canned pickles, vegetables, or fruits permitted under this rule, the date that the food was processed and canned.

h. Home-processed and home-canned pickles, vegetables, or fruits sold under this rule must comply with the following:

(1) Each batch must be measured by a pH meter or a water activity meter and shall have a finished equilibrium pH value of 4.60 or lower or a water activity value of 0.85 or less.

(2) Each container that is sold or offered for sale must contain the date the food was processed and canned.

i. The cottage food producer must provide batch testing records to the regulatory authority upon request, including at the point of sale.

j. Cottage food shall not be offered for sale in a food establishment except in a temporary food establishment, provided that the temporary food establishment is operated by the cottage food producer and the cottage food is offered for sale in a packaged form and labeled in accordance with paragraph 30.13(1) “g.”

30.13(2) Compliance with the cottage food exemption provided in this rule does not represent compliance with federal law.

This rule is intended to implement Iowa Code chapter 137F as amended by 2022 Iowa Acts, House File 2431.

[ARC 6568C, IAB 10/5/22, effective 11/9/22]

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CHAPTER 35
CONTRACTOR REQUIREMENTS

481—35.1(137C,137D,137F) Definitions. The definitions in 481—30.2(10A,137C,137F) and Iowa Code sections 137C.2, 137D.1 and 137F.1 are hereby incorporated by reference as part of this chapter. [ARC 6863C, IAB 2/8/23, effective 3/15/23]

481—35.2(137C,137D,137F) Contracts. A municipal corporation or county may enter into an agreement with the department to license, inspect and enforce under Iowa Code chapters 137C, 137D and 137F.

35.2(1) The department will investigate the municipal corporation or county to determine if it possesses adequate resources to fulfill the requirements of the contract.

35.2(2) A copy of the contract is available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—35.3(137C,137D,137F) Contractor. To enter into an agreement with the department, the contractor must comply with the requirements of this chapter and the applicable sections of the Iowa Code.

35.3(1) The contractor shall furnish the personnel, materials, services and facilities necessary to perform the required functions of the contract.

35.3(2) The contractor is not an authorized agent of the state of Iowa.

35.3(3) Rescinded IAB 4/9/08, effective 7/1/08.

35.3(4) The contractor shall cooperate with the department's monitoring activities in areas under the scope of this agreement.

35.3(5) In addition to the above, the contractor shall:

- a. Provide 24-hour-a-day, 7-day-per-week continuous coverage of the facilities under contract;
- b. Ensure that personnel are available at all times to respond to complaints, investigations, emergencies and other situations;
- c. Furnish appropriate backup personnel to maintain continuous coverage regardless of vacations, illnesses, vacant positions or other inspection staff absences;
- d. Supply trained personnel who are prepared and have the capability to perform inspections; and
- e. Provide other information as requested by the department in regard to inspections and licenses issued under the contract.

481—35.4(137C,137D,137F) Contractor inspection personnel. Contractor inspection personnel should possess the knowledge, skills and training necessary to perform the requirements of the contract.

35.4(1) Contractor inspection personnel must possess experience and education qualifications equal to those required for state food inspectors. Additionally, this experience must include application of the food code.

Municipal corporations or counties that wish to contract with the department to perform food inspections under Iowa Code chapters 137C, 137D and 137F, but who do not have trained personnel to perform these services, shall reimburse the department for the cost of providing the required training.

35.4(2) The salary received by contractor inspection personnel should be comparable to state inspection personnel.

35.4(3) Contractor inspection personnel shall participate in state-sponsored training activities.

481—35.5(137C,137D,137F) Investigation. The contractor shall investigate all alleged food-borne illnesses in areas licensed and inspected under this agreement. The contractor shall notify the department immediately of the existence of any food-borne or other illness caused by, or suspected to have been caused by, unsanitary conditions existing within the jurisdiction of the contractor.

481—35.6(137C,137D,137F) Inspection standards. Inspections shall be completed using forms prescribed by the department for those inspections. The contractor shall follow applicable standards

for inspections found in Iowa Code chapters 137C, 137D and 137F. Inspections shall be conducted pursuant to 481—Chapters 30, 31, 34, 35, and 37.

Copies of inspection standards are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.
[ARC 6863C, IAB 2/8/23, effective 3/15/23]

481—35.7(137C,137D,137F) Enforcement. The contractor shall enforce state laws and rules, including regulations adopted by reference. These regulations are the legal basis of authority in licensing and inspection of establishments under this contract.

481—35.8(137C,137D,137F) Licensing. The contractor shall issue licenses and collect license fees.

481—35.9(137C,137D,137F) Records. The contractor shall maintain records of all inspections, license applications and fees for a minimum of three years. Records shall be provided to the department upon its request.

481—35.10(137C,137D,137F) Contract rescinded. If the department determines that Iowa Code chapters 137C, 137D and 137F are not being enforced by the contractor, the department may rescind the agreement. Notification of the department's action will be provided to the contractor at least 30 days in advance of the action. The contractor has the right to request a hearing with the department to contest the action.

[ARC 6863C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapters 137C, 137D and 137F.

[Filed 12/20/90, Notice 10/31/90—published 1/9/91, effective 2/13/91]

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[Filed ARC 6863C (Notice ARC 6743C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 37
HOTEL AND MOTEL INSPECTIONS

481—37.1(137C) Building and grounds. Owners or managers are expected to keep hotels clean. This means there shall be no litter nor accumulation of refuse anywhere on the premises.

The floors, walls, and ceilings shall be kept clean and in good repair.

37.1(1) Screens or self-closing doors shall be used to keep flies, mosquitoes and other pests out of hotel lobbies, kitchens, or any other indoor area. Other effective methods are acceptable.

37.1(2) All garbage must be kept in metal or plastic containers with tight-fitting lids. Garbage must be removed regularly so it does not create offensive odors, a problem with insects or rodents, or health or fire hazards.

37.1(3) Any room or article which becomes infested with insects or vermin shall be cleaned or chemically treated until there are no more insects or vermin.

481—37.2(137C) Guest rooms. Hotels built or extensively remodeled, as determined by the department, shall provide ventilation in guest rooms with windows or mechanical devices. The furniture, drapes and accessories shall be kept clean and in good repair.

[ARC 6859C, IAB 2/8/23, effective 3/15/23]

481—37.3(137C) Bedding. All materials used on a bed or any sleeping place shall be kept clean and in good repair.

37.3(1) There shall be an under sheet and top sheet for every bed. Pillows shall have pillow slips. The sheets shall be large enough to completely cover the mattress.

37.3(2) Each guest shall be furnished clean sheets and pillow slips.

37.3(3) All other bedding shall be aired between guests and shall be kept clean.

481—37.4(137C) Lavatory facilities. Hotels built or remodeled shall have lavatory facilities in each guest room, except for bed and breakfast inns.

37.4(1) Each guest room shall be equipped with hot and cold running water. The fixtures must be easy to clean. The floors shall be nonabsorbent and impermeable so they can be washed with water.

37.4(2) Lavatory rooms shall be well-lighted and shall be vented to the outside of the building. This may be done with electric units.

37.4(3) Each guest shall have a clean towel each day.

37.4(4) Bed and breakfast inns shall provide at least one restroom which is available to overnight guests. The restroom must be equipped as provided in subrules 37.4(1) to 37.4(3).

[ARC 6859C, IAB 2/8/23, effective 3/15/23]

481—37.5(137C) Glasses and ice.

37.5(1) Each guest shall have clean glasses to use. All cups, glasses or utensils usable more than once shall be sanitized by:

a. Immersion for at least one-half minute in clean, hot water at a temperature of at least 170°F; or
b. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F; or

c. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F; or

d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of a least 75°F for one minute.

37.5(2) When hot water is used for sanitizing, the following equipment shall be used:

a. An integral heating or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and

b. A numerically scaled indicating thermometer, accurate to $\pm 3^\circ\text{F}$, convenient to the sink for frequent checks of water temperature.

37.5(3) Ice kept for guests to use shall be protected from contamination. Lids on ice machines or storage bins shall be tight. Containers used to store ice shall be continuously drained and there shall be an air gap in addition to the drain. Ice containers and utensils shall be designed so that the surfaces are made of a material that is safe for use as a food contact surface and so that the surface can be adequately cleaned.

481—37.6(137C) Employees. Rescinded **ARC 6859C**, IAB 2/8/23, effective 3/15/23.

481—37.7(137C) Room rates. Room rates shall be posted in accordance with Iowa Code chapter 137C. [**ARC 6859C**, IAB 2/8/23, effective 3/15/23]

481—37.8(137C) Inspections. Hotels shall be inspected in accordance with Iowa Code chapter 137C. [**ARC 6859C**, IAB 2/8/23, effective 3/15/23]

481—37.9(137C) Enforcement. Violation of these rules or any provision of Iowa Code chapter 137C is a simple misdemeanor. The department may employ various remedies if violations are discovered, including suspension or revocation of licenses (Iowa Code section 137C.10), injunction (Iowa Code section 137C.29), or referral for criminal prosecution (Iowa Code chapter 137C). [**ARC 6859C**, IAB 2/8/23, effective 3/15/23]

481—37.10(137C) Criminal offense—conviction of license holder.

37.10(1) The department may suspend or revoke the license of a license holder who conducts an activity constituting a criminal offense as set forth in Iowa Code section 137C.10(3).

37.10(2) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

This rule is intended to implement Iowa Code section 137C.10(3). [**ARC 6859C**, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapter 137C.

[Filed 10/13/78, Notice 8/23/78—published 11/1/78, effective 12/7/78]

[Filed 4/23/82, Notice 3/17/82—published 5/12/82, effective 6/16/82]

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[Filed 8/6/87, Notice 7/1/87—published 8/26/87, effective 9/30/87]

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[Filed 9/23/91, Notice 8/7/91—published 10/16/91, effective 11/20/91]

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[Filed 7/5/00, Notice 5/31/00—published 7/26/00, effective 8/30/00]

[Filed **ARC 6859C** (Notice **ARC 6744C**, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 54
GOVERNOR'S AWARD FOR QUALITY CARE

481—54.1(135C) Purpose. A governor's award for quality care is established to recognize health care facilities in Iowa that demonstrate provision of the highest quality care to residents. Health care facilities eligible for nomination and selection must be licensed pursuant to Iowa Code chapter 135C.

481—54.2(135C) Definitions.

"Community living training services" means those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment.

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals or the director's designee.

"Health care facility" or *"facility"* means residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, and intermediate care facilities for persons with an intellectual disability licensed pursuant to Iowa Code chapter 135C.

"Nursing care" means those services that can be provided only under the direction of a registered nurse or licensed practical nurse.

"Personal care" means assistance with those activities of daily living that the recipient can perform only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision of medications that can be self-administered.

"Rehabilitative services" means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

"Social services" means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility and minimizing stress arising from that circumstance.

[ARC 0766C, IAB 5/29/13, effective 7/3/13]

481—54.3(135C) Nomination. The department shall make available a nomination application no later than January 1 of each year. The department shall accept nominations until March 1 of each year.

481—54.4(135C) Applicant eligibility. Eligible nominations shall be made by a resident, family member of a resident or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

[ARC 1205C, IAB 12/11/13, effective 1/15/14]

481—54.5(135C) Nomination information. Applications for the governor's quality care award shall contain but not be limited to the following information:

54.5(1) The reasons that the nominated facility should be considered.

54.5(2) Any unique or special care or services provided by the facility to its residents. Care or services include any unique or special nursing care, personal care, rehabilitative services, social services, or community living training services provided by the facility for its residents or involvement with the local community.

54.5(3) Activities conducted by the facility to enhance the quality of life for its residents.

481—54.6(135C) Evaluation. The department shall review all nominations and select finalists based upon the material(s) provided in the nomination forms. The department shall also consider the following factors in making its selections:

54.6(1) The facility report card completed pursuant to Iowa Code section 135C.20A.

54.6(2) Any unique services provided by a facility to its residents to improve the quality of care in the facility.

54.6(3) Any information submitted by resident advocacy committee members, residents, a resident's family members, or facility staff with regard to the quality of care provided by the facility to its residents.

54.6(4) Whether the facility accepts residents for whom costs are paid under Iowa Code chapter 249A.

54.6(5) Whether there are any outstanding complaints against the facility, as well as the resolution of any complaint already investigated by the department.

54.6(6) Whether the annual fiscal review conducted by the department indicated any irregularities in the residents' accounts.

481—54.7(135C) Selection of finalists. When reviewing the nominations, the department shall rank all facilities according to the above criteria. The ranked list of facilities shall be provided to the director for further review and consideration. When the final selection is made, no more than two facilities from each congressional district shall be recognized as award winners.

481—54.8(135C) Certificate of recognition. Prior to the final selection of facilities, representatives from the department will tour all facilities still in contention to determine the winners. Each winning facility will receive a certificate in recognition of its designation as a quality health care provider. The winning facilities shall be announced and recognized annually.

[ARC 6860C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 10A.104(5), 135C.14 and 135C.20B.

[Filed 6/9/00, Notice 1/12/00—published 6/28/00, effective 8/2/00]

[Filed 1/12/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]

[Filed ARC 0766C (Notice ARC 0601C, IAB 2/6/13), IAB 5/29/13, effective 7/3/13]

[Filed ARC 1205C (Notice ARC 1082C, IAB 10/2/13), IAB 12/11/13, effective 1/15/14]

[Filed ARC 6860C (Notice ARC 6742C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

TITLE II
AIR QUALITY

CHAPTER 20

SCOPE OF TITLE—DEFINITIONS

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—20.1(455B,17A) Scope of title. The department has jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards for air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. The construction and operation of any new or existing stationary source which emits or may emit any air pollutant requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable to this title.

567—Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. 567—Chapter 22 contains the standards and procedures for the permitting of emission sources. 567—Chapter 23 contains the air emission standards for contaminants. 567—Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. 567—Chapter 25 contains the testing and sampling requirements for new and existing sources. 567—Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. 567—Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. 567—Chapter 28 identifies the state ambient air quality standards. 567—Chapter 29 sets forth the qualifications for an observer for reading visible emissions. 567—Chapter 30 sets forth requirements to pay fees for specified activities. 567—Chapter 31 contains rules for the nonattainment major new source review (NSR) program and general conformity. 567—Chapter 32 specifies requirements for conducting the animal feeding operations field study. 567—Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD). 567—Chapter 34 contains provisions for air quality emissions trading programs. 567—Chapter 35 specifies the requirements for the department to provide financial assistance to eligible applicants for the purpose of reducing air pollution emissions.

All dates specified in reference to the Code of Federal Regulations (CFR) are the dates of publication of the last amendments to the portion of the CFR being cited.

[ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17]

567—20.2(455B) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 455B.411 shall be considered to be incorporated verbatim in these rules.

“Air pollution alert” means that action condition declared when the concentrations of air contaminants reach the level at which the first stage control actions are to begin.

“Air pollution emergency” means that action condition declared when the air quality is continuing to degrade to a level that should never be reached, and that the most stringent control actions are necessary.

“Air pollution episode” means a combination of forecast or actual meteorological conditions and emissions of air contaminants which may or do present an imminent and substantial endangerment to the health of persons, during which the chief meteorological factors are the absence of winds that disperse air contaminants horizontally and a stable atmospheric layer which tends to inhibit vertical mixing through relatively deep layers.

“Air pollution forecast” means an air stagnation advisory issued to the department, the commission, and to appropriate air pollution control agencies by an authorized Air Stagnation Advisory Office of the National Weather Service predicting that meteorological conditions conducive to an air pollution episode may be imminent. This advisory may be followed by a prediction of the duration and termination of such meteorological conditions.

“*Air pollution warning*” means that action condition declared when the air quality is continuing to degrade from the levels classified as an air pollution alert, and where control actions in addition to those conducted under an air pollution alert are necessary.

“*Air quality standard*” means an allowable level of air contaminant or atmospheric air concentration established by the commission.

“*Ambient air*” means that portion of the atmosphere, external to buildings, to which the general public has access. Ambient air does not include the atmosphere over land owned or controlled by the source and to which public access is precluded by a fence or other physical barriers.

“*Anaerobic lagoon*,” for purposes of air quality rules contained in 567—Chapters 20 through 35, means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

a. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot feeding operation; or

b. A waste slurry storage basin which receives waste discharges from confinement feeding operations and which is designed for complete removal of accumulated wastes from the basin at least semiannually; or

c. Any anaerobic treatment system which includes collection and treatment facilities for all off-gases.

“*ASME*” means the American Society of Mechanical Engineers.

“*ASTM*” means the American Society for Testing and Materials.

“*Auxiliary fuel firing equipment*” means equipment to supply additional heat, by the combustion of an auxiliary fuel, for the purpose of attaining temperatures sufficient to dry and ignite the waste material, to maintain ignition thereof, and to promote complete combustion of combustible gases, solids and vapors.

“*Backyard burning*” means the disposal of residential waste by open burning on the premises of the property where such waste is generated.

“*Biodiesel fuel*” means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat such as, but not limited to, soybean oil. For purposes of this definition, “biodiesel fuel” must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, 42 U.S.C. Sections 7401, et seq. as amended through November 15, 1990.

“*Btu*” means British thermal unit, the quantity of heat required to raise the temperature of one pound of water from 59°F to 60°F.

“*Carbonaceous fuel*” means any form of combustible matter (whether solid, liquid, vapor or gas) consisting primarily of carbon-containing compounds in either fixed or volatile form, and which is burned primarily for its heat content.

“*Chimney or stack*” means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air, or constructed or arranged for this purpose.

“*COH/1,000 linear feet*” means coefficient of haze per 1,000 linear feet, which is a measure of the optical density of a filtered deposit of particulate matter as given in ASTM Standard D-1704-61, and indicated by the following formula:

$$\text{COH/1,000 linear feet} = \frac{(\text{Area tape, ft}^2)(100,000)}{(\text{Volume of air sample, ft}^3)} \log \frac{100}{\% \text{ transmission}}$$

“*Combustion for indirect heating*” means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to

be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

“*Control equipment*” means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

“*Country grain elevator*” shall have the same definition as “country grain elevator” set forth in 567—subrule 22.10(1).

“*Criteria*” means information used as guidelines for decisions when establishing air quality goals, air quality standards and the various air quality levels, and which in no case is to be confused or used interchangeably with air quality goals or standards.

“*Diesel fuel*” means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the American Society of Testing and Materials (ASTM) D 975-02, “Standard Specification for Diesel Fuel Oils,” grade 1-GT or 2-GT, as defined by ASTM D 2880-00, “Standard Specification for Gas Turbine Fuel Oils,” or grade 1 or 2, as defined by ASTM D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in numbered paragraph “1,” unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

“*Director*” means the director of the department of natural resources or the director’s designee.

“*Electric furnace*” means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

“*Electronic format,*” “*electronic submittal,*” and “*electronic submittal format,*” for purposes of the rules in 567—Chapters 20 through 35, mean a software, Internet-based, or other electronic means specified by the department for submitting air quality information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal as stated in the applicable administrative rules.

“*Emergency generator*” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities; or
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“*Emission limitation*” and “*emission standard*” mean a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

“Equipment” means equipment capable of emitting air contaminants to produce air pollution such as fuel burning, combustion or process devices or apparatus including but not limited to fuel-burning equipment, refuse burning equipment used for the burning of fuel or other combustible material from which the products of combustion are emitted; and including but not limited to apparatus, equipment or process devices which generate heat and may emit products of combustion, and manufacturing, chemical, metallurgical or mechanical apparatus or process devices which may emit smoke, particulate matter or other air contaminants.

“Excess air” means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

“Excess emission” means any emission which exceeds any applicable emission standard prescribed in 567—Chapter 23 or rule 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

“Existing equipment” means equipment, machines, devices or installations that are in operation prior to September 23, 1970.

“Foundry cupola” means a stack-type furnace used for melting of metals consisting of, but not limited to, the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

“Fugitive dust” means any airborne solid particulate matter emitted from any source other than a flue or stack.

“Garbage” means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food, but excluding recognized industrial by-products.

“Gas cleaning device” means a facility designed to remove air contaminants from gases exhausted from equipment as defined herein.

“Goal” means a level of air quality which is expected to be obtained.

“Grain processing” means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for “feed mill equipment,” as “feed mill equipment” is defined in rule 567—22.10(455B).

“Grain storage elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity (grain storage capacity which is inside a building, bin, or silo) of more than 35,200 m³ (ca. 1 million U.S. bushels).

“Greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“Heating value” means the heat released by combustion of one pound of waste or fuel measured in Btu on an as received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D2015-66.

“*Incinerator*” means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material.

“*Initiation of construction, installation or alteration*” means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

“*Landscape waste*” means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

“*Level*” means a certain specified degree, quality or characteristic.

“*Malfunction*” means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

“*Maximum achievable control technology (MACT)*” means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the affected source.

“*Maximum achievable control technology (MACT) floor*” means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best-performing five sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), for a category or subcategory of stationary sources with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

“*New equipment*” means except for any equipment or modified equipment to which 567—subrule 23.1(2) applies, any equipment or control equipment not under construction or for which components have not been purchased on or before September 23, 1970, and any equipment which is altered or modified after such date, which may cause the emission of air contaminants or eliminate, reduce or control the emission of air contaminants.

“*Number 1 fuel oil*” and “*number 2 fuel oil*,” also known as “distillate oil,” mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the American Society of Testing and Materials (ASTM) D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in numbered paragraph “1,” unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

“*Objective*” means a certain specified degree, quality or characteristic expected to be attained.

“*Odor*” means that which produces a response of the human sense of smell to an odorous substance.

“*Odorous substance*” means a gaseous, liquid, or solid material that elicits a physiological response by the human sense of smell.

“*Odorous substance source*” means any equipment, installation operation, or material which emits odorous substances; such as, but not limited to, a stack, chimney, vent, window, opening, basin, lagoon, pond, open tank, storage pile, or inorganic or organic discharges.

“*One-hour period*” means any 60-minute period commencing on the hour.

“*Opacity*” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background (See 567—Chapter 29).

“*Open burning*” means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.

“*Particulate matter*” (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

“*Parts per million (PPM)*” means a term which expresses the volumetric concentration of one material in one million unit volumes of a carrier material.

“*Plan documents*” means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

“*PM₁₀*” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

“*PM_{2.5}*” means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

“*Potential to emit*” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

“*Privileged communication*” means information other than air pollutant emissions data the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

“*Process*” means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

“*Process weight*” means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

“*Process weight rate*” means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

“*Refuse*” means garbage, rubbish and all other putrescible and nonputrescible wastes, except sewage and water-carried trade wastes.

“*Residential waste*” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics.

“*Rubbish*” means all waste materials of nonputrescible nature.

“*Salvage operations*” means any business, industry or trade engaged wholly or in part in salvaging or reclaiming any product or material, including, but not limited to, chemicals, drums, metals, motor vehicles or shipping containers.

“*Shutdown*” means the cessation of operation of any control equipment or process equipment or process for any purpose.

“*Six-minute period*” means any one of the ten equal parts of a one-hour period.

“*Smoke*” means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

“*Smoke monitor*” means a device using a light source and a light detector which can automatically measure and record the light-obscuring power of smoke at a specific location in the flue or stack of a source.

“*Source operation*” means the last operation preceding the emission of an air contaminant, and which results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, but is not an air pollution control operation.

“*Standard conditions*” means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

“*Standard cubic foot (SCF)*” means the volume of one cubic foot of gas at standard conditions.

“*Standard metropolitan statistical area (SMSA)*” means an area which has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Bureau of the Budget (Department of Commerce).

“*Startup*” means the setting into operation of any control equipment or process equipment or process for any purpose.

“*Stationary source*” means any building, structure, facility or installation which emits or may emit any air pollutant.

“*Theoretical air*” means the exact amount of air required to supply the required oxygen for complete combustion of a given quantity of a specific fuel or waste.

“*Total suspended particulate*” means particulate matter as defined in this rule.

“*Trade waste*” means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

“*12-month rolling period*” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

“*Untreated*” as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. “*Untreated*” as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

“*Urban area*” means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

“*Variance*” means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through November 28, 2018.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 5898C, IAB 9/8/21, effective 10/13/21; ARC 6271C, IAB 4/6/22, effective 5/11/22; ARC 6873C, IAB 2/8/23, effective 3/15/23]

567—20.3(455B) Air quality forms generally. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455B.

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¹ Effective date of 20.2(455B), definition of “12-month rolling period,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

CHAPTER 22
CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—22.1(455B) Permits required for new or existing stationary sources.

22.1(1) Permit required. Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), and 567—33.3(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), rule 567—31.3(455B), or paragraph “b” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

(4) The applicant must notify the department of the date that construction or reconstruction actually started. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

d. Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

22.1(2) Exemptions. The requirement to obtain a permit in subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33 (except rule 567—33.9(455B)), prevention of significant deterioration requirements, or rule 567—22.5(455B) or 567—31.3(455B), requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,” 22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph 22.1(2)“g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
 - A detailed description of each change being made;
 - The name and location of the facility;
 - The height of the emission point or stack and the height of the highest building within 50 feet;
 - The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B), 567—22.5(455B), and 567—31.3(455B) and 567—Chapter 33 (except rule 567—33.9(455B)) do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through October 20, 2010, and adopted in rules 567—22.4(455B) and 567—33.3(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in rule 567—22.100(455B)).

i. Initiation of construction, installation, reconstruction, or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in 567—subrule 31.3(1)) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

Equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption.

j. Residential heaters, cookstoves, or fireplaces, which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a

completed registration on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form), certifying that the engine is in compliance with the following federal regulations:

- (1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or
- (2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and
- (3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR 1068.30 is exempt from the registration requirements of this paragraph (22.1(2) “r”).

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. “Maximum true vapor pressure” means the equilibrium partial pressure of the material considering:

- For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or
- For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in rule 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM₁₀;
8. 0.52 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); and
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with

567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls which may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections, and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2) “w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small

unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2) “w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2) “w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 1.875 tons per year of PM₁₀;

8. 0.4 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2) “w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) “Cumulative notice threshold” means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;

2. 40 tons per year of sulfur dioxide;

3. 40 tons per year of nitrogen oxides;

4. 40 tons per year of volatile organic compounds;

5. 100 tons per year of carbon monoxide;

6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 15 tons per year of PM₁₀;

8. 10 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in rule 567—22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of $1380x - 19,200$ or 200,000 for GMAW, or

Y = the greater of $187x - 2,600$ or 28,000 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of $84x - 1,200$ or 12,500 for GMAW, or

Y = the greater of $11x - 160$ or 1,600 for SMAW or FCAW

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen oxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of PM_{10} ;

0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel; and
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and
3. That do not manufacture more than de minimus amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimus manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in rule 567—22.100(455B).

oo. A non-road diesel fueled engine, as defined in 40 CFR 1068.30 as amended through April 30, 2010, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit. Until December 31, 2022, one copy of a construction permit application for a new or modified stationary source shall be presented or mailed to the air quality bureau of the department of natural resources. Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, and hand delivery. Applications are not required to be submitted by certified mail. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. References to “application(s),” “certification(s),” “determination request(s),” “emissions inventory(ies),” “fees,” “form(s),” “notification(s),” “payment(s),” “permit application(s),” and “registration(s)” in rules 567—22.1(455B) through 567—22.10(455B) may, as specified by the department, include electronic submittal.

Until December 31, 2022, an owner or operator applying for a permit as required pursuant to rule 567—31.3(455B) (nonattainment new source review) or rule 567—33.3(455B) (prevention of significant deterioration (PSD)) shall present or mail to the department one hard copy of a construction permit application to the address specified above and, upon request from the department, shall also submit one electronic copy and one additional hard copy of the application. Alternatively, the owner or operator may apply for a permit as required pursuant to rule 567—31.3(455B) or rule 567—33.3(455B) through the electronic submittal format specified by the department.

The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

On or after January 1, 2023, construction permit applications, including the information referenced above and in rules 567—22.1(455B) through 567—22.10(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

a. Regulatory applicability determinations. If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

- (1) Preliminary plans and specifications of equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants which are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the permit application forms available on the department’s website. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the

employee is doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;
- (6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;
- (7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);
- (8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)“b,” then the owner or operator shall submit an application for a case-by-case MACT determination, as required in 567—subparagraph 23.1(4)“b”(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer’s name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included;

- (9) A signed statement that ensures the applicant’s legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project;

- (10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under subrule 22.1(1), rule 567—22.4(455B), rule 567—22.5(455B), rule 567—22.8(455B), rule 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted, and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

- (1) The source of the water being discharged to the lagoon;
- (2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;
- (3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);
- (4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;
- (5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in rule 567—60.2(455B);
- (6) A description of available water supplies to prove that adequate water is available for dilution;
- (7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;
- (8) Any additional information needed by the department to determine compliance with these rules.

22.1(4) Conditional permits. Rescinded IAB 3/18/15, effective 4/22/15.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3440C, IAB 11/8/17, effective 12/13/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 6271C, IAB 4/6/22, effective 5/11/22]

567—22.2(455B) Processing permit applications.

22.2(1) Incomplete applications. The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) Public notice and participation. A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) Final notice. The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 1913C, IAB 3/18/15, effective 4/22/15]

567—22.3(455B) Issuing permits.

22.3(1) Stationary sources other than anaerobic lagoons. In no case shall a construction permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

- a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and
- b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and
- c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and
- d. That the applicant has met all other applicable requirements.

22.3(2) Anaerobic lagoons. A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

22.3(3) Conditions of approval. A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “b” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. Rescinded IAB 3/18/15, effective 4/22/15.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 7 days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently

classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet website. The owner or operator will be notified by the department at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

22.3(4) Denial of a permit.

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) Modification of a permit. The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) Limits on hazardous air pollutants. The department may limit a source's hazardous air pollutant potential to emit, as defined at rule 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) Revocation of a permit. The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) Ownership change of permitted equipment. The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to rule 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change;

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and

c. The construction permit number of the equipment changing ownership.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 4335C, IAB 3/13/19, effective 4/17/19]

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[ARC 2352C, IAB 1/6/16, effective 12/16/15]

567—22.5(455B) Special requirements for nonattainment areas. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in rule 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15]

567—22.6(455B) Nonattainment area designations. Rescinded ARC 1227C, IAB 12/11/13, effective 1/15/14.

567—22.7(455B) Alternative emission control program.

22.7(1) Applicability. The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended August 5, 2013) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. The applicant is presently in compliance with EPA approved SIP requirements, or
b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

22.7(2) Demonstration requirements. The applicant for the alternative emission control program shall have the burden of demonstrating that:

a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;

b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)

c. The pollutants being exchanged are comparable and within the same pollutant category;

d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through July 20, 2004, will not be exchanged for nonhazardous air pollutants;

e. The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

22.7(3) Approval process.

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

[ARC 1227C, IAB 12/11/13, effective 1/15/14]

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. “Sprayed material” is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures

of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule (567—22.8(455B)).

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

d. Facilities which facilitywide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by subrules 22.1(1) and 22.1(3) unless otherwise exempt.

e. Notification letter.

(1) Facilities which claim to be permitted by provisions of this rule must submit to the department a written notification letter, on forms provided by the department, certifying that the facility meets the following conditions:

1. All paint booths and associated equipment are in compliance with the provisions of subrule 22.8(1);

2. All paint booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

3. All paint booths and associated equipment currently are or will be in compliance with or otherwise exempt from the national emissions standards for hazardous air pollutants (NESHAP) for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

- (2) The certification must be signed by one of the following individuals:
1. For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).
 2. For partnerships, a general partner.
 3. For sole proprietorships, the proprietor.
 4. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.8(2) Reserved.

[**ARC 7565B**, IAB 2/11/09, effective 3/18/09; **ARC 8215B**, IAB 10/7/09, effective 11/11/09; **ARC 1013C**, IAB 9/18/13, effective 10/23/13; **ARC 2352C**, IAB 1/6/16, effective 12/16/15; **ARC 3679C**, IAB 3/14/18, effective 4/18/18]

567—22.9(455B) Special requirements for visibility protection.

22.9(1) Definitions. Definitions included in this subrule apply to the provisions set forth in rule 567—22.9(455B).

“*Best available retrofit technology (BART)*” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

“*Deciview*” means a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on an equation found in 40 CFR 51.301, as amended on July 1, 1999.

“*Mandatory Class I area*” means any Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(2) Best available retrofit technology (BART) applicability. A source shall comply with the provisions of subrule 22.9(3) if the source falls within numbers 1 through 20 or 22 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) or is a fossil-fuel fired boiler individually totaling more than 250 million Btu’s per hour heat input and meets the following criteria:

- a. Any emission unit for which startup began after August 7, 1962; and
- b. Construction of the emission unit commenced on or before August 7, 1977; and
- c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM₁₀), or volatile organic compounds.

22.9(3) Duty to self-identify. The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, by September 1, 2005.

22.9(4) Notification. The department shall notify in writing the owner or operator or designated representative of a source of the department’s determination that either:

- a. A source meets the conditions listed in 22.9(2) (a source that meets these conditions is BART-eligible); or
- b. For the purposes of the regional haze program, a source may cause or contribute to visibility impairment in any mandatory Class I area, as identified during either:
 - (1) Regional haze plan development required by 40 CFR 51.308(d) as amended on July 6, 2005; or
 - (2) A five-year periodic review on the progress toward the reasonable progress goals required by 40 CFR 51.308(g) as amended on July 6, 2005; or

(3) A ten-year comprehensive periodic revision of the implementation plan required by 40 CFR 51.308(f) as amended on July 6, 2005.

22.9(5) Analysis. The department may request in writing an analysis from the owner or operator or designated representative of a source that the department has determined may be causing or contributing to visibility impairment in a mandatory Class I area.

a. BART control analysis. For the purposes of BART, a source that is responsible for an impact of 1.0 deciview or more at a mandatory Class I area is considered to cause visibility impairment. A source that is responsible for an impact of 0.5 deciview or more at a mandatory Class I area is considered to contribute to visibility impairment. If a source meets either of these criteria, the owner or operator or designated representative shall prepare the BART analysis in accordance with Section IV of Appendix Y of 40 CFR Part 51 as amended through July 5, 2005, and shall submit the BART analysis 180 days after receipt of written notification by the department that a BART analysis is required.

b. Regional haze analysis. The owner or operator or designated representative of a source subject to 22.9(4) “b” shall prepare and submit an analysis after receipt of written notification by the department that an analysis is required.

22.9(6) Control technology implementation. Following the department’s review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source identified in 22.9(4) shall:

a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

22.9(7) BART exemption. The owner or operator of a source subject to the BART emission control requirements may apply for an exemption from subrule 22.9(5) in accordance with 40 CFR 51.303 as amended on July 1, 1999.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 4335C, IAB 3/13/19, effective 4/17/19]

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2) “ooo”), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

22.10(1) Definitions. For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“Country grain elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Country grain terminal elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;

3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Feed mill equipment,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“Grain,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“Grain processing” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“Grain storage elevator” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“Grain terminal elevator,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m³ (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Permanent storage capacity” means grain storage capacity which is inside a building, bin, or silo.

22.10(2) Methods for determining potential to emit (PTE). The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the

owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM₁₀ for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM₁₀ per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3)“a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM₁₀ on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3)“a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department’s Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM₁₀ emissions

annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM₁₀ emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM₁₀ per year and is less than or equal to 50 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM₁₀ prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No

later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM₁₀ emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will increase the facility's PTE for PM₁₀ such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM₁₀ at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM₁₀ at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility’s permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM₁₀ at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility’s annual PTE for PM₁₀ is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM₁₀ is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator

of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM₁₀ for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

[ARC 1561C, IAB 8/6/14, effective 9/10/14; ARC 2352C, IAB 1/6/16, effective 12/16/15]

567—22.11 to 22.99 Reserved.

567—22.100(455B) Definitions for Title V operating permits. For purposes of rules 567—22.100(455B) to 567—22.116(455B), the following terms shall have the meaning indicated in this rule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

“*Actual emissions*” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which immediately precedes that date and which is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Affected facility*” means, with reference to a stationary source, any apparatus which emits or may emit any regulated air pollutant or contaminant.

“*Affected source*” means a source that includes one or more affected units subject to any emissions reduction requirement or limitation under Title IV of the Act.

“*Affected state*” means any state which is contiguous to the permitting state and whose air quality may be affected through the modification, renewal or issuance of a Title V permit; or which is within 50 miles of the permitted source.

“*Affected unit*” means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under Title IV of the Act.

“*Allowable emissions*” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2) and 23.1(3);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

“*Allowance*” means an authorization by the administrator under Title IV of the Act or rules promulgated thereunder to emit during or after a specified calendar year up to one ton of sulfur dioxide.

“*Applicable requirement*” includes the following:

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including Parts C and D, of the Act;
3. Any standard or other requirement under Section 111 of the Act (subrule 23.1(2)), including Section 111(d);
4. Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
5. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;
10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that such requirements need not be contained in a Title V permit; and
12. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

“*Area source*” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“*Consumer Price Index*” means for any calendar year the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

“*Country grain elevator*” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

“*Designated representative*” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended through April 28, 2006, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in Chapter 22, it

shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“*Draft Title V permit*” means the version of a Title V permit for which the department offers public participation or affected state review.

“*Electronic format,*” “*electronic submittal,*” and “*electronic submittal format*” mean a software, Internet-based, or other electronic means specified by the department for submitting information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in rules 567—22.100(455B) through 567—22.116(455B) may, as specified by the department, include electronic submittal.

“*Emergency generator*” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities;
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“*Emissions allowable under the permit*” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“*Emissions unit*” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act or any related regulations.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

“*Equipment leaks*” means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems.

“*Existing hazardous air pollutant source*” means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR 63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“*Facility*” means, with reference to a stationary source, any apparatus which emits or may emit any air pollutant or contaminant.

“*Federal implementation plan*” means a plan promulgated by the administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques, and provides for attainment of the relevant national ambient air quality standard.

“*Federally enforceable*” means all limitations and conditions which are enforceable by the administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2) and 23.1(3); the requirements of such other state rules or orders approved by the administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“*Final Title V permit*” means the version of a Title V permit issued by the department that has completed all required review procedures.

“*Fugitive emissions*” are those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“*Hazardous air pollutant*” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
106945	1-Bromopropane
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine
120821	1,2,4-Trichlorobenzene
106990	1,3-Butadiene
542756	1,3-Dichloropropylene
106467	1,4-Dichlorobenzene
123911	1,4-Dioxane
53963	2-Acetylaminofluorene
532274	2-Chloroacetophenone
79469	2-Nitropropane
540841	2,2,4-Trimethylpentane
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)
94757	2,4-D salts and esters
95807	2,4-Diaminotoluene
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
91941	3,3'-Dichlorobenzidine

cas #	chemical name
119904	3,3'-Dimethoxybenzidine
119937	3,3'-Dimethylbenzidine
92671	4-Aminobiphenyl
60117	4-Dimethylaminoazobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
101144	4,4'-Methylenebis(2-chloroaniline)
101779	4,4'-methylenedianiline
534521	4,6-Dinitro-o-cresol, and salts
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
62533	Aniline
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
1332214	Asbestos (friable)
71432	Benzene
92875	Benzidine
98077	Benzoic trichloride
100447	Benzyl chloride
0	Beryllium Compounds
57578	Beta-Propiolactone
92524	Biphenyl
111444	Bis(2-chloroethyl) ether
542881	Bis(chloromethyl) ether
75252	Bromoform
74839	Bromomethane
0	Cadmium Compounds
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol

cas #	chemical name
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
108907	Chlorobenzene
510156	Chlorobenzilate
75003	Chloroethane
67663	Chloroform
74873	Chloromethane
107302	Chloromethyl methyl ether
126998	Chloroprene
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
1319773	Cresol/Cresylic acid (isomers & mixture)
98828	Cumene
0	Cyanide Compounds ¹
72559	DDE
117817	Di(2-ethylhexyl) phthalate
334883	Diazomethane
132649	Dibenzofuran
84742	Dibutyl phthalate
75092	Dichloromethane
62737	Dichlorvos
111422	Diethanolamine
64675	Diethyl sulfate
68122	Dimethyl formamide
131113	Dimethyl phthalate
77781	Dimethyl sulfate
79447	Dimethylcarbanyl chloride
106898	Epichlorohydrin
140885	Ethyl acrylate
100414	Ethylbenzene
107211	Ethylene glycol
75218	Ethylene oxide
96457	Ethylene thiourea
151564	Ethyleneimine
0	Fine Mineral Fibers ³
50000	Formaldehyde
0	Glycol Ethers ² , except cas #111-76-2, ethylene glycol mono-butyl ether, also known as EGBE or 2-Butoxyethanol

cas #	chemical name
76448	Heptachlor
87683	Hexachloro-1,3-butadiene
118741	Hexachlorobenzene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride
123319	Hydroquinone
78591	Isophorone
0	Lead Compounds
58899	Lindane (all isomers)
108394	m-Cresol
108383	m-Xylene
108316	Maleic anhydride
0	Manganese Compounds
0	Mercury Compounds
67561	Methanol
72435	Methoxychlor
60344	Methyl hydrazine
74884	Methyl iodide
108101	Methyl isobutyl ketone
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertbutyl ether
101688	Methylene bis(phenylisocyanate)
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline
90040	o-Anisidine
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol

cas #	chemical name
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter ⁴
1120714	Propane sultone
123386	Propionaldehyde
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) ⁵
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

¹X'CN where X=H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

²Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH₂CH₂)_n-OR' where n=1,2, or 3; R=alkyl or aryl groups; R'=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

⁵A type of atom which spontaneously undergoes radioactive decay.

“*High-risk pollutant*” means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as adopted by reference in 567—subrule 23.1(4).

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl) ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10

cas #	chemical name	weighting factor
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

“Major source” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, “major source” shall have the meaning specified by the administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as “marginal” or “moderate,” 50 tpy or more in areas classified or treated as classified as “serious,” 25 tpy or more in areas classified or treated as classified as “severe” and 10 tpy or more in areas classified or treated as classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified or treated as classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM₁₀), nonattainment areas classified or treated as classified as “serious,” sources with the potential to emit 70 tpy or more of PM₁₀.

For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“*Manually operated equipment*” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system which is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

“*Maximum achievable control technology (MACT)*” means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source, and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the Title IV affected source category.

“*Maximum achievable control technology (MACT) floor*” means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emission information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best performing 5 sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information) for a category or subcategory or stationary source with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

“*New Title IV affected source or unit*” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

“*Nonattainment area*” means an area so designated by the administrator, acting pursuant to Section 107 of the Act.

“*Permit modification*” means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found at rule 567—22.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found at rules 567—22.120(455B) to 567—22.147(455B). This definition of

“permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

“*Permit revision*” means any permit modification or administrative permit amendment.

“*Permitting authority*” means the Iowa department of natural resources or the director thereof.

“*Potential to emit*” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“*Proposed Title V permit*” means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 22.107(7) “a.”

“*Regulated air contaminant*” shall mean the same thing as “regulated air pollutant.”

“*Regulated air pollutant*” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM10, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“*Regulated air pollutant or contaminant (for fee calculation)*,” which is used only for purposes of 567—Chapter 30, means any “regulated air pollutant or contaminant” except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM10;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in rule 567—20.2(455B).

“*Renewal*” means the process by which a permit is reissued at the end of its term.

“*Responsible official*” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting authority.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

“*Section 502(b)(10) changes*” are changes that contravene an express permit term and which are made pursuant to rule 567—22.110(455B). Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

“*State implementation plan (SIP)*” means the plan adopted by the state of Iowa and approved by the administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“*Stationary source categories*” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;

21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu's per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu's per hour heat input;
27. Any other stationary source category, which as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

2. The term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended through December 24, 2014) and summing the resultant value for each to compute a tpy CO₂e.

For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

“*Title V permit*” means an operating permit under Title V of the Act.

“*12-month rolling period*” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

[ARC 9224B, IAB 11/17/10, effective 12/22/10; ARC 9906B, IAB 12/14/11, effective 11/16/11; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 5898C, IAB 9/8/21, effective 10/13/21; ARC 6873C, IAB 2/8/23, effective 3/15/23]

567—22.101(455B) Applicability of Title V operating permit requirements.

22.101(1) Except as provided in rule 567—22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

- a. Any affected source subject to the provisions of Title IV of the Act;
- b. Any major source;
- c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;

f. Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.

22.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

22.101(3) Election to apply for permit. Rescinded IAB 7/19/06, effective 8/23/06.
[ARC 2352C, IAB 1/6/16, effective 12/16/15]

567—22.102(455B) Source category exemptions.

22.102(1) All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rule making to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

22.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

22.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through March 16, 2015;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

[ARC 2949C, IAB 2/15/17, effective 3/22/17]

567—22.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2)“*f.*”

22.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR 70.5 (as amended through October 6, 2009), these activities need not be included in the Title V permit application.

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

- (1) Owned by that person or another person, and
 - (2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and
 - (3) Located in this state.
- c.* Equipment or control equipment which eliminates all emissions to the atmosphere.
- d.* Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.
- e.* Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.
- f.* Residential wood heaters, cookstoves, or fireplaces.
- g.* The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.
- h.* Recreational fireplaces.
- i.* Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.
- j.* Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.
- k.* Retail gasoline and diesel fuel handling facilities.
- l.* Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
- m.* Equipment used for hydraulic or hydrostatic testing.
- n.* General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o.* Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
- p.* Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).
- q.* Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.
- r.* Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.
- s.* Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.
- t.* Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.
- u.* Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.
- v.* Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act.

w. Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.

x. Water treatment or storage systems, as follows:

(1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM₁₀,

0.52 tons per year of PM_{2.5} (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of “high-risk pollutant” is found in rule 567—22.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in this subparagraph (22.103(2) “*b*”(2)). Used oils meeting the specification from 40 CFR 279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in paragraph 22.103(2) “*a*.”

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of this rule (567—22.103(455B)):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);

2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or

3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

[ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; Editorial change: IAC Supplement 5/9/18]

567—22.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

22.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

22.104(2) Sources making permit revisions pursuant to rule 567—22.110(455B) shall not be in violation of this rule.

567—22.105(455B) Title V permit applications.

22.105(1) Duty to apply. For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall, until December 31, 2022, present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 502 East 9th Street, Des Moines, Iowa 50319 (one copy); and U.S. EPA Region VII, 11201 Renner Boulevard, Lenexa, Kansas 66219 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Branch, 1020 6th Street SE, Cedar Rapids, Iowa 52401 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, or hand delivery. Applications are not required to be submitted by certified mail. Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. An owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit all required fees as required in 567—Chapter 30.

On or after January 1, 2023, Title V operating permit applications, including the information referenced above and in rules 567—22.100(455B) through 567—22.116(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided. An owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit all required fees as required in 567—Chapter 30.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 567—22.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V

permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) **Renewal application.** The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) **Changes allowed without a permit revision (off-permit revision).** The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 567—22.110(455B) shall submit to the department a written notification as specified in rule 567—22.110(455B) at least 30 days prior to the proposed change.

(6) **Application for an administrative permit amendment.** Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 567—22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 567—22.111(455B).

(7) **Application for a minor permit modification.** Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 567—22.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in rule 567—22.112(455B).

(8) **Application for a significant permit modification.** The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 567—22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 567—22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

(9) **Application for an acid rain permit.** The owner or operator of a source subject to the acid rain program, as set forth in rules 567—22.120(455B) through 567—22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

22.105(2) Standard application form and required information. To apply for a Title V permit, applicants shall, until December 31, 2022, complete the standard permit application form available only from the department and supply all information required by the filing instructions found on that form. Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department.

On or after January 1, 2023, the standard application form shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)“c” and “d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 567—22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity.

Unless otherwise specified in subrule 22.128(4), nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application, unless the department notifies the applicant that the emissions-related information is not required because it has already been submitted:

(1) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempted. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the approved fee schedule.

(2) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and the applicability of any and all requirements.

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any.

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(5) Identification and description of air pollution control equipment.

(6) Identification and description of compliance monitoring devices or activities.

(7) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(8) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(9) Calculations on which the information in subparagraphs (1) to (8) above is based.

(10) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to subrule 22.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to subrule 22.108(11) and rule 567—22.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such

requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with subrule 22.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by subrules 22.108(3), 22.108(4) or 22.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

22.105(3) Hazardous air pollutant early reduction application. Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)“d.”

22.105(4) Acid rain application content. The acid rain application content shall be as prescribed in the acid rain rules found at rules 567—22.128(455B) and 567—22.129(455B).

22.105(5) More than one Title V operating permit for a stationary source. Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3440C, IAB 11/8/17, effective 12/13/17; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 6271C, IAB 4/6/22, effective 5/11/22]

567—22.106(455B) Annual Title V emissions inventory.

22.106(1) Emissions fee. Fees shall be paid as set forth in 567—Chapter 30.

22.106(2) Emissions inventory and documentation due dates. The emissions inventory shall be submitted through the electronic format specified by the department.

An owner or operator shall, by March 31, submit documentation of actual emissions for the previous calendar year.

The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

22.106(3) Correction of errors. If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

[ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

567—22.107(455B) Title V permit processing procedures.

22.107(1) Action on application.

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 567—22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 567—22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) "d."

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in rule 567—22.104(455B), shall be in effect from the date the application is determined to be complete

until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit the provisions of paragraph 22.107(1)“d” shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and subrule 22.1(1).

22.107(2) Confidential information. If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the administrator. Requests for confidentiality must comply with 561—Chapter 2.

22.107(3) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations or levels of technology existing on the date the initial application is deemed complete.

22.107(4) Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.107(5) Early reduction application evaluation. Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4)“d.”

22.107(6) Public notice and public participation.

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

b. Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.

- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.
- (8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed, including the closest department office, and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by subrule 22.107(7).

22.107(7) Permit review by EPA and affected states.

a. Transmission of information to the administrator. Except as provided in subrule 22.107(2) or waived by the administrator, the director shall provide to the administrator a copy of each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be submitted in a computer-readable format compatible with the administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to subrule 22.107(6), except to the extent that subrule 22.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. EPA objection. No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 22.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

22.107(8) Public petitions to the administrator regarding Title V permits.

a. If the administrator does not object to a proposed permit, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make an objection pursuant to 40 CFR 70.8(d) as amended to July 21, 1992.

b. Any person who petitions the administrator pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, shall notify the department by certified mail of such petition immediately, and in no case more than 10 days following the date the petition is submitted to EPA. Such notice shall include a copy of the petition submitted to EPA and a separate written statement detailing the grounds for

the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the administrator's objection.

c. If the administrator objects to the permit as a result of a petition filed pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, then the director shall not issue a permit until the administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the administrator's objection, and the administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR 70.7 as amended to July 21, 1992, then the director may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

22.107(9) *A Title V permit application may be denied if:*

a. The director finds that a source is not in compliance with any applicable requirement; or

b. An applicant knowingly submits false information in a permit application.

22.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

[ARC 3679C, IAB 3/14/18, effective 4/18/18]

567—22.108(455B) Permit content. Each Title V permit shall include the following elements:

22.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

22.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

22.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring),

periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

22.108(4) Record keeping. With respect to record keeping, the permit shall incorporate all applicable record-keeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements;
- (2) The date(s) the analyses were performed;
- (3) The company or entity that performed the analyses;
- (4) The analytical techniques or methods used;
- (5) The results of such analyses; and
- (6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

22.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subrule 22.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

22.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

22.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

- (1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.
- (2) Exceedences of applicable emission rates.
- (3) The use of any allowance prior to the year for which it was allocated.
- (4) Contravention of any other provision of the permit.

22.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

22.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the administrator of EPA along with a claim of confidentiality.

22.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule 567—30.4(455B).

22.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

22.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

22.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under subrules 22.108(1) to 22.108(13) and subrule 22.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in subrule 22.108(18) to all terms and conditions that allow such increases and decreases in emissions.

22.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

b. Notwithstanding paragraph "a" of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR 70.7 or 70.8 (as amended through July 21, 1992).

22.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of subrules 22.108(3) to 22.108(5), compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to ensure compliance with the

terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of subrule 22.107(4).

b. Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with paragraphs 22.105(2) "h" and "j" and subrule 22.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of paragraphs 22.105(2) "h" and "j," to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

22.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 22.108(16) "c" are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) The permitted facility was at the time being properly operated;
- (3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and
- (4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph 22.108(5) "b." This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

22.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the administrator pursuant to the Act, provided that:

- (1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;
- (2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR 70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or
- (3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

22.108(18) Permit shield.

a. The director may expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

- (1) Such applicable requirements are included and are specifically identified in the permit; or
- (2) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

b. A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

c. A permit shield shall not alter or affect the following:

- (1) The provisions of Section 303 of the Act (emergency orders), including the authority of the administrator under that section;
- (2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
- (3) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;
- (4) The ability of the department or the administrator to obtain information from the facility pursuant to Section 114 of the Act.

22.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed

replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

[ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17]

567—22.109(455B) General permits.

22.109(1) *Applicability.* The director may issue a general permit for multiple sources that contain a number of operations and processes which emit pollutants with similar characteristics and that have substantially similar requirements regarding emissions, operations, monitoring and record keeping. General permits shall not be issued to Title IV affected sources except as provided in regulations promulgated by the administrator under Title IV of the Act.

22.109(2) *Issuance of general permits.* General permits may be issued by the director and codified in this chapter following notice and opportunity for public participation consistent with the procedures contained in subrule 22.107(6). Public participation shall be provided for a new general permit, for any revision of an existing general permit, and for renewal of an existing general permit. Permit review by the administrator and affected states shall be provided consistent with subrule 22.107(7). Each general permit shall identify criteria by which sources may qualify to operate under the general permit and shall comply with all requirements applicable to other Title V permits.

22.109(3) *Applications.* Any source that would qualify for a general permit must apply for either (a) coverage under the terms of the general permit or (b) an individual Title V permit. Applications for authority to operate under the terms of a general permit shall be made on the “General Permit Application Form” and shall specify the general permit concerned by citing the subrule containing that general permit. These applications may deviate from the Title V individual permit application but shall include all information necessary to determine qualification for, and to ensure compliance with, the general permit. If a source is later determined not to qualify for the terms and conditions of the general permit, then the source shall be subject to enforcement action for operation without a Title V operating permit.

22.109(4) *General permit content.* A general permit shall include all of the following:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A compliance plan;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the general permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the general permit;
- e. The requirement to submit at least every six months the results of any required monitoring;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A severability clause provision pursuant to subrule 22.108(8);
- i. A provision for payment of fees pursuant to subrule 22.108(10);
- j. A provision for emissions trading pursuant to subrules 22.108(11) and 22.108(13);
- k. Other provisions pursuant to subrule 22.108(9);
- l. Statement that the Title V permit is to be kept at the site of the source as well as at the corporate offices; and
- m. The process for individual sources to apply for coverage under the general permit.

22.109(5) *Action on general permit application.*

a. Once the director has issued a general permit, any source which is a member of the class of sources covered by the general permit may apply to the director for authority to operate under the general permit.

b. Review of a general permit application. The director shall grant the conditions and terms of a general permit to all sources that apply and qualify under the identified criteria.

c. The director may grant a source's request for authorization to operate under a general permit without repeating the public participation procedures followed in subrule 22.109(2). However, such a grant shall not be a final permit action for purposes of judicial review.

22.109(6) General permit renewal. The director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall expire when the general permit expires regardless of when the authorization began during the five-year period.

22.109(7) Relationship to individual permits. Any source covered by a general permit may request to be excluded from coverage by applying for an individual Title V permit. Coverage under the general permit shall terminate on the date the individual Title V permit is issued.

22.109(8) Permit shield for general permit. Each general permit issued under this chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Any permit under this chapter that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

22.109(9) Revocations of authority to operate.

a. The director may require any source or a class of sources authorized to operate under a general permit to individually apply for and obtain a Title V permit at any time if:

- (1) The source is not in compliance with the terms and conditions of the general permit;
- (2) The director has determined that the emissions from the source or class of sources is contributing significantly to ambient air quality standard violations and that these emissions are not adequately addressed by the terms and conditions of the general permit; or
- (3) The director has information which indicates that the cumulative effects on human health and the environment from the sources covered under the general permit are unacceptable.

b. The director shall provide written notice to all sources operating under that general permit of the proposed revocation of that general permit. Such notice shall include an explanation of the basis for the proposed action.

567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

22.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 of the Act, modifications under Section 111 of the Act, modifications under Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in rules 567—22.140(455B) through 567—22.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the administrator:

- (1) A brief description of the change within the permitted facility,
- (2) The date on which the change will occur,
- (3) Any change in emission as a result of the change,
- (4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

22.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

22.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of subrule 22.110(1).

22.110(4) The permit shield provided in subrule 22.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

567—22.111(455B) Administrative amendments to Title V permits.

22.111(1) An administrative permit amendment is a permit revision that does any of the following:

- a.* Corrects typographical errors;
- b.* Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- c.* Requires more frequent monitoring or reporting by the permittee; or
- d.* Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

22.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the administrator under Title IV of the Act.

22.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

22.111(4) The director shall submit to the administrator a copy of each Title V permit revised under this rule.

22.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

567—22.112(455B) Minor Title V permit modifications.

22.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a.* Do not violate any applicable requirement;
- b.* Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the Title V permit;
- c.* Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d.* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps which the source would assume to avoid classification

as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

- e.* Are not modifications under any provision of Title I of the Act; and
- f.* Are not required to be processed as a significant modification under rule 567—22.113(455B).

22.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

- a.* A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- b.* The source's suggested draft permit;
- c.* Certification by a responsible official, pursuant to subrule 22.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- d.* Completed forms to enable the department to notify the administrator and affected states as required by subrule 22.107(7).

22.112(3) The department shall notify the administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of subrule 22.107(7). The department shall promptly send to the administrator any notification required by subrule 22.107(7).

22.112(4) The director shall not issue a final Title V permit modification until after the administrator's 45-day review period or until the administrator has notified the director that the administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the administrator's 45-day review period provided for in subrule 22.107(7), whichever is later, the director shall:

- a.* Issue the permit modification as proposed;
- b.* Deny the permit modification application;
- c.* Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- d.* Revise the draft permit modification and transmit to the administrator the proposed permit modification, as required by subrule 22.107(7).

22.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) "a" to "c," the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

22.112(6) Permit shield. The permit shield under subrule 22.108(18) shall not extend to minor Title V permit revisions.

567—22.113(455B) Significant Title V permit modifications.

22.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor Title V modifications or as administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or record-keeping permit terms, and any change in the method of measuring compliance with existing requirements.

22.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as those requirements that apply to Title V permit issuance and renewal.

22.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

22.113(4) For a change that is subject to the requirements for a significant permit modification (see rule 567—22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

567—22.114(455B) Title V permit reopenings.

22.114(1) Each issued Title V permit shall include provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

a. The department receives notice that the administrator has granted a petition for disapproval of a permit pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, provided that the reopening may be stayed pending judicial review of that determination;

b. The department or the administrator determines that the Title V permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Title V permit;

c. Additional applicable requirements under the Act become applicable to a Title V source, provided that the reopening on this ground is not required if the permit has a remaining term of less than three years, the effective date of the requirement is later than the date on which the permit is due to expire, or the additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit. Such a reopening shall be complete not later than 18 months after promulgation of the applicable requirement.

d. Additional requirements, including excess emissions requirements, become applicable to a Title IV affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

e. The department or the administrator determines that the permit must be revised or revoked to ensure compliance by the source with the applicable requirements.

22.114(2) Proceedings to reopen and reissue a Title V permit shall follow the procedures applicable to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

22.114(3) A notice of intent shall be provided to the Title V source at least 30 days in advance of the date the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

22.114(4) Within 90 days of receipt of a notice from the administrator that cause exists to reopen a permit, the director shall forward to the administrator and the source a proposed determination of termination, modification, revocation, or reissuance of the permit, as appropriate.

567—22.115(455B) Suspension, termination, and revocation of Title V permits.

22.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil or criminal penalty imposed for violations of the permit.

22.115(2) If the director suspends, terminates or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested.

The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

567—22.116(455B) Title V permit renewals.

22.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the administrator and affected states.

22.116(2) Except as provided in rule 567—22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 567—22.105(455B).

567—22.117 to 22.119 Reserved.

567—22.120(455B) Acid rain program—definitions. The terms used in rules 567—22.120(455B) through 567—22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

“40 CFR Part 72,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through March 28, 2011.

“40 CFR Part 73,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 74,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 75,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through August 30, 2016.

“40 CFR Part 76,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

“40 CFR Part 77,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

“40 CFR Part 78,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through August 8, 2011.

“*Acid rain permit*” means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

“*Department*” means the department of natural resources and is the state acid rain permitting authority.

“*Draft acid rain permit*” means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

“*Electronic format*,” “*electronic submittal*,” and “*electronic submittal format*” mean a software, Internet-based, or other electronic means specified by the department for submitting information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in rules 567—22.120(455B) through 567—22.146(455B) may, as specified by the department, include electronic submittal.

“*Permit revision*” means a permit modification, fast-track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 567—22.140(455B) through 567—22.144(455B).

“*Proposed acid rain permit*” means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

“*Title V operating permit*” means a permit issued under rules 567—22.100(455B) through 567—22.116(455B) implementing Title V of the Act.

“*Ton*” or “*tonnage*” means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567—25.2(455B), with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

[ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 5051C, IAB 6/17/20, effective 7/22/20]

567—22.121(455B) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in rules 567—22.120(455B) to 567—22.147(455B) are defined as follows:

“*ASTM*” means American Society for Testing and Materials.

“*Btu*” means British thermal unit.

“*CFR*” means Code of Federal Regulations.

“*DOE*” means Department of Energy.

“*EPA*” means Environmental Protection Agency.

“*mmBtu*” means million Btu.

“*MWe*” means megawatt electrical.

“*SO₂*” means sulfur dioxide.

567—22.122(455B) Applicability.

22.122(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

- a. A unit listed in Table 1 of 40 CFR 73.10(a).
- b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10, and any other existing utility unit, except a unit under subrule 22.122(2).
- c. A utility unit, except a unit under subrule 22.122(2), that:
 - (1) Is a new unit;
 - (2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
 - (3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
 - (4) Was an exempt cogeneration facility under paragraph 22.122(2)“*d*” but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
 - (5) Was an exempt qualifying facility under paragraph 22.122(2)“*e*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
 - (6) Was an exempt independent power production facility under paragraph 22.122(2)“*f*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
 - (7) Was an exempt solid waste incinerator under paragraph 22.122(2)“*g*” but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.
 - (8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

22.122(2) The following types of units are not affected units subject to the requirements of the acid rain program:

- a.* A simple combustion turbine that commenced operation before November 15, 1990.
- b.* Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- c.* Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- d.* A cogeneration facility which:
 - (1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or
 - (2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.
- e.* A qualifying facility that:
 - (1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and
 - (2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.
- f.* An independent power production facility that:
 - (1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and
 - (2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.
- g.* A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.
- h.* A nonutility unit.

22.122(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

567—22.123(455B) Acid rain exemptions.

22.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

22.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

22.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

567—22.124(455B) Retired units exemption. Rescinded IAB 9/9/98, effective 10/14/98.

567—22.125(455B) Standard requirements.

22.125(1) *Permit requirements.*

a. The designated representative of each affected source and each affected unit at the source shall:

(1) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in rule 567—22.128(455B);

(2) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

b. The owners and operators of each affected source and each affected unit at the source shall:

(1) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and

(2) Have an acid rain permit.

22.125(2) *Monitoring requirements.*

a. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

b. The emissions measurements recorded and reported in accordance with rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

c. The requirements of rule 567—25.2(455B) and regulations implementing Section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

22.125(3) *Sulfur dioxide requirements.*

a. The owners and operators of each source and each affected unit at the source shall:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(2) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

b. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

c. An affected unit shall be subject to the requirements under paragraph 22.125(3) "a" as follows: starting January 1, 2000, an affected unit under paragraph 22.122(1) "b"; or starting on the later of January 1, 2000, or the deadline for monitor certification under rule 567—25.2(455B), an affected unit under paragraph 22.122(1) "c."

d. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

e. An allowance shall not be deducted, in order to comply with the requirements under paragraph 22.125(3) "a," prior to the calendar year for which the allowance was allocated.

f. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under rules

567—22.123(455B) and 567—22.124(455B) and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

g. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

22.125(4) Nitrogen oxides requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emission limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7; 76.6; and 76.8, 76.11, 76.12, and 76.15; or by alternative emission limitations provided for by 40 CFR 76.10, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 and approved by the department.

22.125(5) Excess emissions requirements.

a. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and submit a copy to the department.

b. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

22.125(6) Record-keeping and reporting requirements.

a. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with rule 567—25.2(455B).

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(4) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

b. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under rules 567—22.146(455B) and 567—22.147(455B) and rule 567—25.2(455B).

22.125(7) Liability.

a. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 567—22.123(455B) or 567—22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

b. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

c. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

d. Each affected source and each affected unit shall meet the requirements of the acid rain program.

e. Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

f. Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 567—22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

g. Each violation of a provision of rules 567—22.120(455B) to 567—22.146(455B) and 40 CFR Parts 72, 73, 75, 76, 77, and 78 and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

22.125(8) *Effect on other authorities.* No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 567—22.123(455B) or 567—22.124(455B) shall be construed as:

a. Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

b. Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;

c. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;

d. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

e. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

567—22.126(455B) Designated representative—submissions.

22.126(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72, and, concurrently, shall submit a copy to the department. Whenever the term “designated representative” is used in this rule, the term shall be construed to include the alternate designated representative.

22.126(2) Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

22.126(3) In each submission under the acid rain program, the designated representative shall certify by signature:

a. The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”

b. The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for

submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

22.126(4) The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

22.126(5) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

c. Provided that the submission or determination covers the source or the unit.

22.126(6) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

567—22.127(455B) Designated representative—objections.

22.127(1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

22.127(2) The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

567—22.128(455B) Acid rain applications—requirement to apply.

22.128(1) *Duty to apply.* The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subrules 22.128(2) and 22.128(3), and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its acid rain program requirements.

22.128(2) *Deadlines.*

a. For any source with an existing unit described under paragraph 22.122(1)“*b*,” the designated representative shall submit a complete acid rain permit application governing such unit to the department on or before January 1, 1996.

b. For any source with a new unit described under subparagraph 22.122(1)“*c*”(1), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit described under subparagraph 22.122(1)“*c*”(2), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described under subparagraph 22.122(1)“*c*”(3), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under subparagraph 22.122(1)“*c*”(4), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third

of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any source with a unit described under subparagraph 22.122(1)“c”(5), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described under subparagraph 22.122(1)“c”(6), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described under subparagraph 22.122(1)“c”(7), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

i. For a Phase II unit with a Group 1 or a Group 2 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_x emissions to the department no later than January 1, 1998.

22.128(3) Duty to reapply. The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit.

22.128(4) Submission of copies. One copy of all permit applications shall, until December 31, 2022, be presented or mailed to the air quality bureau of the department of natural resources. On or after January 1, 2023, the designated representative shall submit the application in the electronic format specified by the department, if electronic submittal is provided.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 6271C, IAB 4/6/22, effective 5/11/22]

567—22.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department, which includes the following elements:

22.129(1) Identification of the affected source for which the permit application is submitted;

22.129(2) Identification of each affected unit at the source for which the permit application is submitted;

22.129(3) A complete compliance plan for each unit, in accordance with rules 567—22.131(455B) and 567—22.132(455B);

22.129(4) The standard requirements under rule 567—22.125(455B); and

22.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

567—22.130(455B) Acid rain permit application shield and binding effect of permit application.

22.130(1) Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under paragraph 22.125(1)“b” and subrule 22.128(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the department, necessary to issue a permit.

22.130(2) Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

22.130(3) A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit

application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

567—22.131(455B) Acid rain compliance plan and compliance options—general.

22.131(1) For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

a. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 567—22.131(455B), one or more of the acid rain compliance options.

b. For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9.

22.131(2) The compliance plan may include a multiunit compliance option under rule 567—22.132(455B) or Section 407 of the Act or regulations implementing Section 407.

a. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(1) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(2) A complete permit application is submitted covering each unit governed by such plan.

b. The department's approval of a plan under paragraph 22.131(2)"*a*" that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

22.131(3) Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with rules 567—22.131(455B) and 567—22.132(455B), any acid rain compliance option for conditional approval; provided that an acid rain compliance option under Section 407 of the Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Act.

a. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph 22.131(2)"*a*," the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under rule 567—22.132(455B) and regulations implementing Section 407 of the Act.

b. The notification under paragraph 22.131(3)"*a*" shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(3)"*a*" and "*b*," the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

d. A notification meeting the requirements of paragraphs 22.131(3)"*a*" and "*b*" will revise the unit's permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

22.131(4) Termination of compliance option.

a. The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under

rule 567—22.132(455B) and regulations implementing Section 407 of the Act. If the compliance option includes a plan described in paragraph 22.131(2)“a,” the designated representative for each source governed by the plan shall sign and certify the notification.

b. The notification under paragraph 22.131(4)“a” shall specify the calendar year for which the termination will take effect.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(4)“a” and “b,” the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

d. A notification meeting the requirements of paragraphs 22.131(4)“a” and “b” will revise the unit’s permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

567—22.132(455B) Repowering extensions. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.133(455B) Acid rain permit contents—general.

22.133(1) Each acid rain permit (including any draft acid rain permit) will contain the following elements:

a. All elements required for a complete acid rain permit application under rule 567—22.129(455B), as approved or adjusted by the department;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

22.133(2) Each acid rain permit is deemed to incorporate the definitions of terms under rule 567—22.120(455B).

567—22.134(455B) Acid rain permit shield. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 567—22.120(455B) to 567—22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 73, 75, 76, 77, and 78, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7)“f.”

567—22.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with rules 567—22.100(455B) to 567—22.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 567—22.135(455B) to 567—22.145(455B).

567—22.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—22.137(455B) Acid rain permit issuance procedures—statement of basis.

22.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

22.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

22.137(3) The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—22.138(455B) Issuance of acid rain permits.

22.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

22.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 567—22.100(455B) to 567—22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

22.138(3) Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 567—22.133(455B) and 567—22.134(455B).

22.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

22.138(5) Permit issuance deadline and effective date.

a. On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with rule 567—22.126(455B) and meets the requirements of rules 567—22.135(455B) to 567—22.139(455B) and rules 567—22.100(455B) to 567—22.116(455B).

b. Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with rule 567—22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

c. Each acid rain permit issued in accordance with paragraph 22.138(5) "a" shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1) "c," the deadline for monitor certification under rule 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

22.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

22.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—22.139(455B) Acid rain permit appeal procedures.

22.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

22.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

22.139(3) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

22.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

- a.* The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;
- b.* Any standard requirement under rule 567—22.125(455B);
- c.* The emissions monitoring and reporting requirements applicable to the affected units at an affected source under rule 567—25.2(455B);
- d.* Uncontested provisions of the decision on appeal; and
- e.* The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

22.139(5) The department will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

22.139(6) The department will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with subrules 22.107(7) and 22.107(8).

567—22.140(455B) Permit revisions—general.

22.140(1) Rules 567—22.140(455B) to 567—22.145(455B) shall govern revisions to any acid rain permit issued by the department.

22.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

22.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

22.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as amended to July 21, 1992, as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with rule 567—22.143(455B).

22.140(5) The standard requirements of rule 567—22.125(455B) shall not be modified or voided by a permit revision.

22.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under rule 567—22.132(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

22.140(7) For permit revisions not described in rules 567—22.141(455B) and 567—22.142(455B), the department may, in its discretion, determine which of these rules is applicable.

567—22.141(455B) Permit modifications.

22.141(1) Permit modifications shall follow the permit issuance requirements of rules 567—22.135(455B) to 567—22.139(455B) and subrules 22.113(2) and 22.113(3).

22.141(2) For purposes of applying subrule 22.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with rules 567—22.140(455B) to 567—22.145(455B).

22.141(3) The following permit revisions are permit modifications:

- a.* Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;
- b.* Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period;

- c.* Determinations concerning failed repowering projects under subrule 22.132(6); and
- d.* At the option of the designated representative submitting the permit revision, the permit revisions listed in subrule 22.142(2).

567—22.142(455B) Fast-track modifications.

22.142(1) Fast-track modifications shall follow the following procedures:

a. The designated representative shall serve a copy of the fast-track modification on the administrator, the department, and any person entitled to a written notice under subrules 22.107(6) and 22.107(7). Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.

b. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the air quality bureau of the department and to the designated representative.

c. The designated representative shall submit the fast-track modification to the department on or before commencement of the public comment period.

d. Within 30 days of the close of the public comment period, the department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with subrule 22.113(2) as applied to significant modifications.

22.142(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 567—22.141(455B):

a. Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

b. Addition of a nitrogen oxides averaging plan to a permit; and

c. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

567—22.143(455B) Administrative permit amendment.

22.143(1) Administrative amendments shall follow the procedures set forth at rule 567—22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

22.143(2) The following permit revisions are administrative amendments:

a. Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 567—22.132(455B) are met;

b. Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72;

c. Correction of typographical errors;

d. Changes in names, addresses, or telephone or facsimile numbers;

e. Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72;

f. Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 567—22.125(455B);

h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and

i. Incorporation of changes that the administrator has determined to be similar to those in paragraphs “a” through “h” of this subrule.

567—22.144(455B) Automatic permit amendment. The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit’s acid rain permit by operation of law without any further review:

22.144(1) Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit’s allowance tracking system account; and

22.144(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

567—22.145(455B) Permit reopenings.

22.145(1) As provided in rule 567—22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

22.145(2) In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 567—22.135(455B) to 567—22.139(455B).

22.145(3) Any reopening of an acid rain permit shall not affect the term of the permit.

567—22.146(455B) Compliance certification—annual report.

22.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

22.146(2) The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15) “e” with regard to the acid rain portion of the source’s Title V operating permit.

567—22.147(455B) Compliance certification—units with repowering extension plans. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.148(455B) Sulfur dioxide opt-ins. The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins.

567—22.149 to 22.199 Reserved.

567—22.200(455B) Definitions for voluntary operating permits. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.201(455B) Eligibility for voluntary operating permits. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.202(455B) Requirement to have a Title V permit. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.203(455B) Voluntary operating permit applications. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.204(455B) Voluntary operating permit fees. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.205(455B) Voluntary operating permit processing procedures. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.206(455B) Permit content. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.207(455B) Relation to construction permits. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.209(455B) Change of ownership for facilities with voluntary operating permits. Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

567—22.210 to 22.299 Reserved.

567—22.300(455B) Operating permit by rule for small sources. Except as provided in subrule 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B).

22.300(1) Definitions for operating permit by rule for small sources. For the purposes of rule 567—22.300(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

22.300(2) Registration for operating permit by rule for small sources.

a. Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

22.300(3) Exceptions to eligibility.

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)“*a*” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

c. Sources which meet the registration criteria established in 22.300(2)“a” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

22.300(4) Stationary source with de minimus emissions. Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)“b” shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)“a”:

a. *De minimus emission and usage limits.* For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source’s emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

b. *Record keeping for de minimus sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimus sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the

stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph "a" above.

22.300(5) Provision for air pollution control equipment. The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

22.300(6) Emission limitations.

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

- (1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and
- (2) 5 tons per year of a single hazardous air pollutant, and
- (3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

22.300(7) Record-keeping requirements for non-de minimus sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4) "a."

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7) "c" below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7) "c" (1) through 22.300(7) "c" (4). Record-keeping requirements for emission control equipment are specified in 22.300(7) "c" (5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.
- (3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:
 1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and
 2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.
- (4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:
 1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;
 2. A monthly log of operating hours and each raw material used and its amount; and
 3. Purchase orders, invoices, or other documents to support information in the monthly log.
- (5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:
 1. Information on equipment type and description, make and model, and emission units served by the control equipment;
 2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and
 3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

22.300(8) Registration and reporting requirements.

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rule 567—22.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 567—22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B).

2. Within 12 months of becoming subject to rule 567—22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8) "b."

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible

official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8) "b." I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of rule 567—22.300(455B) only if all applicable requirements of rule 567—22.300(455B) are met and if the registration is not denied by the director under rule 567—22.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8) “*b*” for the new or modified source.

22.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 567—22.101(455B) to 567—22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

22.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

22.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change; and

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 4335C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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[◇] Two or more ARCs

¹ Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

² Effective date of 22.100(455B), definition of “12-month rolling period”; 22.200(455B); 22.201(1) “a,” “b,”; 22.201(2) “a”; 22.206(2) “c,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

³ Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

⁴ Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs “g” and “i,” delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 23
EMISSION STANDARDS FOR CONTAMINANTS

[Prior to 7/1/83, DEQ Ch 4]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in subrule 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in subrule 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in subrule 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in subrule 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through February 16, 2021, are adopted by reference, except §60.530 through §60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Fossil fuel-fired steam generators. A fossil fuel-fired steam generating unit of more than 250 million Btu heat input for which construction, reconstruction, or modification is commenced after August 17, 1971. Any facility covered under paragraph “z” is not covered under this paragraph. (Subpart D as amended through January 20, 2011)

b. Incinerators. An incinerator of more than 50 tons per day charging rate. (Subpart E)

c. Portland cement plants. Any of the following in a Portland cement plant: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems. (Subpart F)

d. Nitric acid plants. A nitric acid production unit. Unless otherwise exempted, these standards apply to any nitric acid production unit that commences construction or modification after August 17, 1971, and on or before October 14, 2011. (Subpart G)

e. Sulfuric acid plants. A sulfuric acid production unit. (Subpart H)

f. Hot mix asphalt plants. Each hot mix asphalt facility that commenced construction or modification after June 11, 1973. For the purpose of this paragraph, a hot mix asphalt facility is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems. (Subpart I)

g. Petroleum refineries. Rescinded IAB 3/18/15, effective 4/22/15.

h. Secondary lead smelters. Rescinded IAB 3/18/15, effective 4/22/15.

i. Secondary brass and bronze ingot production plants. Any of the following at a secondary brass and bronze ingot production plant; reverberatory and electric furnaces of 1000/kilograms (2205 pounds) or greater production capacity and blast (cupola) furnaces of 250 kilograms per hour (550 pounds per hour) or greater production capacity. (Subpart M)

j. Iron and steel plants. A basic oxygen process furnace. (Subpart N)

k. Sewage treatment plants. An incinerator which burns the sludge produced by municipal sewage treatment plants. (Subpart O of 40 CFR 60 and Subpart E of 40 CFR 503.)

l. Steel plants. Either of the following at a steel plant: electric arc furnaces and dust-handling equipment, the construction, modification, or reconstruction of which commenced after October 21, 1974, and on or before August 17, 1983. (Subpart AA)

m. Primary copper smelters. Rescinded IAB 3/18/15, effective 4/22/15.

n. Primary zinc smelters. Rescinded IAB 3/18/15, effective 4/22/15.

o. Primary lead smelter. Rescinded IAB 3/18/15, effective 4/22/15.

p. Primary aluminum reduction plants. Rescinded IAB 3/18/15, effective 4/22/15.

q. Wet process phosphoric acid plants in the phosphate fertilizer industry. A wet process phosphoric acid plant, which includes any combination of the following: reactors, filters, evaporators and hotwells. (Subpart T)

r. Superphosphoric acid plants in the phosphate fertilizer industry. A superphosphoric acid plant which includes any combination of the following: evaporators, hotwells, acid sumps, and cooling tanks. (Subpart U)

s. Diammonium phosphate plants in the phosphate fertilizer industry. A granular diammonium phosphate plant which includes any combination of the following: reactors, granulators, dryers, coolers, screens and mills. (Subpart V)

t. Triple super phosphate plants in the phosphate fertilizer industry. A triple super phosphate plant which includes any combination of the following: mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills and facilities which store run-of-pile triple superphosphate. (Subpart W)

u. Granular triple superphosphate storage facilities in the phosphate fertilizer industry. A granular triple superphosphate storage facility which includes any combination of the following: storage or curing piles, conveyors, elevators, screens and mills. (Subpart X)

v. Coal preparation plants. Any of the following at a coal preparation plant which processes more than 200 tons per day: thermal dryers; pneumatic coal cleaning equipment (air tables); coal processing and conveying equipment (including breakers and crushers); coal storage systems; and coal transfer and loading systems. (Subpart Y)

w. Ferroalloy production. Any of the following: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment. (Subpart Z)

x. Kraft pulp mills. Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB as amended or corrected through February 27, 2014)

y. Lime manufacturing plants. A rotary lime kiln or a lime hydrator used in the manufacture of lime at other than a kraft pulp mill. (Subpart HH)

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility. (Subpart Da as amended through January 20, 2011)

aa. Stationary gas turbines. Any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self-propelled. It may, however, be mounted on a vehicle for portability. (Subpart GG)

bb. Petroleum storage vessels. Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978, having a storage capacity greater than 151,412 liters (40,000 gallons). (Subpart K)

cc. Petroleum storage vessels. Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart Ka)

dd. Glass manufacturing plants. Any glass melting furnace. (Subpart CC)

ee. Automobile and light-duty truck surface coating operations at assembly plants. Any of the following in an automobile or light-duty truck assembly plant: prime coat operations, guide coat operations, and topcoat operations. (Subpart MM)

ff. Ammonium sulfate manufacture. Any of the following in the ammonium sulfate industry: ammonium sulfate dryers in the caprolactam by-product, synthetic, and coke oven by-product sectors of the industry. (Subpart PP)

gg. Surface coating of metal furniture. Any metal furniture surface coating operation in which organic coatings are applied. (Subpart EE)

hh. Lead-acid battery manufacturing plants. Any lead-acid battery manufacturing plant which uses any of the following: grid casting, paste mixing, three-process operation, lead oxide manufacturing, lead reclamation, other lead-emitting operations. (Subpart KK)

ii. Phosphate rock plants. Any phosphate rock plant which has a maximum plant production capacity greater than four tons per hour including the following: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production. (Subpart NN)

jj. Graphic arts industry. Publication rotogravure printing. Any publication rotogravure printing press except proof presses. (Subpart QQ)

kk. Industrial surface coating — large appliances. Any surface coating operation in a large appliance surface coating line. (Subpart SS)

ll. Metal coil surface coating. Any of the following at a metal coil surface coating operation: prime coat operation, finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet-on-wet over the prime coat and both coatings are cured simultaneously. (Subpart TT)

mm. Asphalt processing and asphalt roofing manufacturing. Any saturator, mineral handling and storage facility at asphalt roofing plants; and any asphalt storage tank and any blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants. (Subpart UU)

nn. Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry. Standards for affected facilities in the synthetic organic chemicals manufacturing industry (SOCMI) that commenced construction, reconstruction, or modification after January 5, 1981, and on or before November 7, 2006, are set forth in Subpart VV. Standards for affected SOCMI facilities that commenced construction, reconstruction or modification after November 7, 2006, are set forth in Subpart VVa. The standards apply to pumps, compressors, pressure relief devices, sampling systems, open-ended valves or lines (OEL), valves, and flanges or other connectors which handle VOC. (Subpart VV and Subpart VVa)

oo. Beverage can surface coating. Any beverage can surface coating lines for two-piece steel or aluminum containers in which soft drinks or beer are sold. (Subpart WW)

pp. Bulk gasoline terminals. The total of all loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks. (Subpart XX)

qq. Pressure sensitive tape and label surface coating operations. Any coating line used in the tape manufacture of pressure sensitive tape and label materials. (Subpart RR)

rr. Metallic mineral processing plants. Any ore processing and handling equipment. (Subpart LL)

ss. Synthetic fiber production facilities. Any solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. (Subpart HHH)

tt. Equipment leaks of VOC in petroleum refineries. A compressor and all equipment (defined in 40 CFR, Part 60.591) within a process unit for which the construction, reconstruction, or modification commenced after January 4, 1983. (Subpart GGG)

uu. Flexible vinyl and urethane coating and printing. Each rotogravure printing line used to print or coat flexible vinyl or urethane products. (Subpart FFF)

vv. Petroleum dry cleaners. Petroleum dry-cleaning plant with a total manufacturer's rated dryer capacity equal to or greater than 38 kilograms (84 pounds): petroleum solvent dry-cleaning dryers, washers, filters, stills, and settling tanks. (Subpart JJJ)

ww. Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983. Steel plants that produce carbon, alloy, or specialty steels: electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems. (Subpart AAa)

xx. Wool fiberglass insulation manufacturing plants. Rotary spin wool fiberglass manufacturing line. (Subpart PPP)

yy. Iron and steel plants. Secondary emissions from basic oxygen process steelmaking facilities for which construction, reconstruction, or modification commenced after January 20, 1983. (Subpart Na)

zz. Equipment leaks of VOC from on-shore natural gas processing plants. A compressor and all equipment defined in 40 CFR, Part 60.631, unless exempted, for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart KKK)

aaa. On-shore natural gas processing: SO₂ emissions. Unless exempted, each sweetening unit and each sweetening unit followed by a sulfur recovery unit for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart LLL)

bbb. Nonmetallic mineral processing plants. Unless exempted, each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or rail car loading station in fixed or portable nonmetallic mineral processing plants for which construction, reconstruction, or modification commenced after August 31, 1983. (Subpart OOO)

ccc. Industrial-commercial-institutional steam generating units. Unless exempted, each steam generating unit for which construction, reconstruction, or modification commenced after June 19, 1984, and which has a heat input capacity of more than 100 million Btu/hour. (Subpart Db as amended through January 20, 2011)

ddd. Volatile organic liquid storage vessels. Unless exempted, volatile organic liquid storage vessels for which construction, reconstruction, or modification commenced after July 23, 1984. (Subpart Kb)

eee. Rubber tire manufacturing plants. Unless exempted, each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation that commences construction or modification after January 20, 1983. (Subpart BBB)

fff. Industrial surface coating: surface coating of plastic parts for business machines. Each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats for which construction, modification, or reconstruction begins after January 8, 1986. (Subpart TTT)

ggg. VOC emissions from petroleum refinery wastewater systems. Each individual drain system, each oil-water separator, and each aggregate facility for which construction, modification or reconstruction is commenced after May 4, 1987. (Subpart QQQ)

hhh. Magnetic tape coating facilities. Unless exempted, each coating operation and each piece of coating mix preparation equipment for which construction, modification, or reconstruction is commenced after January 22, 1986. (Subpart SSS)

iii. Polymeric coating of supporting substrates. Unless exempted, each coating operation and any on-site coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates for which construction, modification, or reconstruction begins after April 30, 1987. (Subpart VVV)

jjj. VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes. Unless exempted, any air oxidation reactor, air oxidation reactor and recovery system or combination of two or more reactors and the common recovery system used in the production of any

of the chemicals listed in 40 CFR §60.617 for which construction, modification or reconstruction commenced after October 21, 1983. (Subpart III)

kkk. VOC emissions from synthetic organic chemical manufacturing industry distillation operations. Unless exempted, any distillation unit, distillation unit and recovery system or combination of two or more distillation units and the common recovery system used in the production of any of the chemicals listed in 40 CFR §60.667 for which construction, modification or reconstruction commenced after December 30, 1983. (Subpart NNN)

lll. Small industrial-commercial-institutional steam generating units. Each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989, and that has a maximum design heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour. (Subpart Dc as amended through January 20, 2011)

mmm. VOC emissions from the polymer manufacturing industry. Each of the following process sections in the manufacture of polypropylene and polyethylene—raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage; each material recovery section of polystyrene manufacturing using a continuous process; each polymerization reaction section of poly(ethylene terephthalate) manufacturing using a continuous process; each material recovery section of poly(ethylene terephthalate) manufacturing using a continuous process that uses dimethyl terephthalate; each raw material section of poly(ethylene terephthalate) manufacturing using a continuous process that uses terephthalic acid; and each group of fugitive emissions equipment within any process unit in the manufacturing of polypropylene, polyethylene, or polystyrene (including expandable polystyrene). The applicability date for construction, modification or reconstruction for polystyrene and poly(ethylene terephthalate) affected facilities and some polypropylene and polyethylene affected facilities is September 30, 1987. For the other polypropylene and polyethylene affected facilities the applicability date for these regulations is January 10, 1989. (Subpart DDD)

nnn. Municipal waste combustors. Unless exempted, a municipal waste combustor with a capacity greater than 225 megagrams per day of municipal solid waste for which construction is commenced after December 20, 1989, and on or before September 20, 1994, and modification or reconstruction is commenced after December 20, 1989, and on or before June 19, 1996. (Subpart Ea)

ooo. Grain elevators. A grain terminal elevator or any grain storage elevator except as provided under 40 CFR 60.304(b), August 31, 1993. A grain terminal elevator means any grain elevator which has a permanent storage capacity of more than 2.5 million U.S. bushels except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. A grain storage elevator means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 1 million bushels. Any construction, modification, or reconstruction after August 3, 1978, is subject to this paragraph. (Subpart DD)

ppp. Mineral processing plants. Each calciner and dryer at a mineral processing plant unless excluded for which construction, modification, or reconstruction is commenced after April 23, 1986. (Subpart UUU)

qqq. VOC emissions from synthetic organic chemical manufacturing industry reactor processes. Unless exempted, each affected facility that is part of a process unit that produces any of the chemicals listed in 40 CFR §60.707 as a product, coproduct, by-product, or intermediate for which construction, modification, or reconstruction commenced after June 29, 1990. Affected facility is each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, or each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged. (Subpart RRR)

rrr. Municipal solid waste landfills, as defined by 40 CFR 60.751. Each municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, must comply. (Subpart WWW as amended through April 10, 2000)

sss. Municipal waste combustors. Unless exempted, a municipal waste combustor with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction,

modification or reconstruction is commenced after September 20, 1994, or for which modification or reconstruction is commenced after June 19, 1996. (Subpart Eb)

ttt. Hospital/medical/infectious waste incinerators. Unless exempted, a hospital/medical/infectious waste incinerator for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998. (Subpart Ec)*

*As of November 24, 2010, the adoption by reference of Part 60 Subpart Ec is rescinded.

uuu. New small municipal waste combustion units. Unless exempted, this standard applies to a small municipal waste combustion unit that commenced construction after August 30, 1999, or small municipal waste combustion units that commenced reconstruction or modification after June 6, 2001. (Part 60, Subpart AAAA)

vvv. Commercial and industrial solid waste incineration. Unless exempted, this standard applies to units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001. (Part 60, Subpart CCCC, as amended through December 1, 2000)

www. Other solid waste incineration (OSWI) units. Unless exempted, this standard applies to other solid waste incineration (OSWI) units for which construction is commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006. (Part 60, Subpart EEEE)

xxx. Reserved.

yyy. Stationary compression ignition internal combustion engines. Unless otherwise exempted, these standards apply to each stationary compression ignition internal combustion engine whose construction, modification or reconstruction commenced after July 11, 2005. (Part 60, Subpart IIII)

zzz. Stationary spark ignition internal combustion engines. These standards apply to each stationary spark ignition internal combustion engine whose construction, modification or reconstruction commenced after June 12, 2006. (Part 60, Subpart JJJJ)

aaaa. Stationary combustion turbines. Unless otherwise exempted, these standards apply to stationary combustion turbines with a heat input at peak load equal to or greater than 10 MMBtu per hour, based on the higher heating value of the fuel, that commence construction, modification, or reconstruction after February 18, 2005. (Part 60, Subpart KKKK)

bbbb. Nitric acid plants. Unless otherwise exempted, these standards apply to any nitric acid production unit that commenced construction, reconstruction or modification after October 14, 2011. (Subpart Ga)

cccc. Sewage sludge incineration units. Each sewage sludge incineration (SSI) unit for which construction or reconstruction commenced after October 14, 2010, or for which modification commenced after September 21, 2011, must comply. (Subpart LLLL)

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

a. Asbestos. Any of the following involves asbestos emissions: asbestos mills, surfacing of roadways, manufacturing operations, fabricating, insulating, waste disposal, spraying applications and demolition and renovation operations. (Subpart M). Any person subject to notification requirements under this rule shall submit fees as required in 567—Chapter 30.

b. Beryllium. Rescinded IAB 3/18/15, effective 4/22/15.

c. Beryllium rocket motor firing. Rescinded IAB 3/18/15, effective 4/22/15.

d. Mercury. Any of the following involving mercury emissions: mercury ore processing facilities, mercury cell chlor-alkali plants, sludge incineration plants, sludge drying plants, and a combination of sludge incineration plants and sludge drying plants. (Subpart E)

e. Vinyl chloride. Ethylene dichloride purification and the oxychlorination reactor in ethylene dichloride plants. Vinyl chloride formation and purification in vinyl chloride plants. Any of the following involving polyvinyl chloride plants: reactor; stripper; mixing, weighing, and holding containers; monomer recovery system; sources following the stripper(s). Any of the following involving ethylene dichloride, vinyl chloride, and polyvinyl chloride plants: relief valve discharge; fugitive emission sources. (Subpart F)

f. Equipment leaks of benzene (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle benzene. (Subpart J)

g. Equipment leaks of volatile hazardous air pollutants (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle volatile hazardous air pollutants. (Subpart V)

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Rescinded IAB 3/18/15, effective 4/22/15.

i. Inorganic arsenic emissions from glass manufacturing plants. Each glass melting furnace (except pot furnaces) that uses commercial arsenic as a raw material. (Subpart N)

j. Inorganic arsenic emissions from primary copper smelters. Rescinded IAB 3/18/15, effective 4/22/15.

k. Benzene emissions from coke by-product recovery plants. Each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR §61.135.

The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants. (Subpart L)

l. Benzene emissions from benzene storage vessels. Unless exempted, each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR §61.18. (Subpart Y)

m. Benzene emissions from benzene transfer operations. Unless exempted, the total of all loading racks at which benzene is loaded into tank trucks, rail cars, or marine vessels at each benzene production facility and each bulk terminal. (Subpart BB)

n. Benzene waste operations. Unless exempted, the provisions of this subrule apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by any of these listed facilities. (Subpart FF)

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through May 6, 2022, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific

affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. General provisions. General provisions apply to owners or operators of affected activities or facilities except when otherwise specified in a particular subpart or in a relevant standard. (Subpart A)

b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j). (40 CFR Part 63, Subpart B)

(1) Section 112(g) requirements. For the purposes of this subparagraph, the definitions shall be the same as the definitions found in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996. The owner or operator of a new or reconstructed major source of hazardous air pollutants must apply maximum achievable control technology (MACT) for new sources to the new or reconstructed major source. If the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) of the Clean Air Act and incorporated in another subpart of 40 CFR Part 63, excluded in 40 CFR 63.40(e) and (f), or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998, then the major source in question is not subject to the requirements of this subparagraph. The owner or operator of an affected source shall apply for a construction permit as required in 567—paragraph 22.1(1)“b.” The construction permit application shall contain an application for a case-by-case MACT determination for the major source.

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under CAA 112(d) must submit a MACT application (Parts 1 and 2) in accordance with the provisions of 40 CFR 63.52, as amended through April 5, 2002, by the CAA Section 112(j) deadline. In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, as defined in 40 CFR 63.41, in accordance with the provisions of 567—paragraph 22.1(3)“a.”

c. Reserved.

d. Compliance extensions for early reductions of hazardous air pollutants. Compliance extensions for early reductions of hazardous air pollutants are available to certain owners or operators of an existing source who wish to obtain a compliance extension from a standard issued under Section 112(d) of the Act. (Subpart D)

e. Reserved.

f. Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry. These standards apply to chemical manufacturing process units that are part of a major source. These standards include applicability provisions, definitions and other general provisions that are applicable to Subparts F, G, and H of 40 CFR 63. (Subpart F)

g. Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater. These standards apply to all process vents, storage vessels, transfer racks, and wastewater streams within a source subject to Subpart F of 40 CFR 63. (Subpart G)

h. Emission standards for organic hazardous air pollutants for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes that are located at a plant site that is a major source. Affected equipment includes: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63. In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAPs as determined according to the provisions of 40 CFR Part 63.161. The provisions of 40 CFR Part 63.161 also specify how to determine that a piece of equipment is not in organic HAP service. (Subpart H)

i. Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes (defined in 40 CFR 63.190) that are located at a plant site that is a major source. Subject equipment includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems at certain source categories. These standards establish the applicability of Subpart H for sources that are not classified as synthetic organic chemical manufacturing industries. (Subpart I)

j. Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production. Rescinded IAB 3/18/15, effective 4/22/15.

k. Reserved.

l. Emission standards for coke oven batteries. These standards apply to existing coke oven batteries, including by-product and nonrecovery coke oven batteries and to new coke oven batteries, or as defined in the subpart. (Subpart L)

m. Perchloroethylene air emission standards for dry cleaning facilities (40 CFR Part 63, Subpart M). These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene (also known as perc). The specific standards applicable to dry cleaning facilities, including the compliance deadlines, are set out in the federal regulations contained in Subpart M. In general, dry cleaning facilities must meet the following requirements, which are set out in greater detail in Subpart M:

(1) New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT).

(2) New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices.

(3) New area sources that are located in residential buildings and that commence operation after July 13, 2006, are prohibited from using perc.

(4) New area sources located in residential buildings that commenced operation between December 21, 2005, and July 13, 2006, must eliminate all use of perc by July 27, 2009.

(5) Existing area sources located in residential buildings must eliminate all use of perc by December 21, 2020.

(6) New area sources that are not located in residential buildings are prohibited from operating transfer machines.

(7) Existing area sources that are not located in residential buildings are prohibited from operating transfer machines after July 27, 2008.

(8) All sources must comply with the requirements in Subpart M for emissions control, equipment specifications, leak detection and repair, work practice standards, record keeping and reporting.

n. Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. These standards limit the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. (Subpart N)

o. Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations. New and existing major source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level achieved by generally available control technologies (GACT). Certain sources are exempt as described in 40 CFR 63.360. (Subpart O)

p. Emission standards for primary aluminum reduction plants. Rescinded IAB 3/18/15, effective 4/22/15.

q. Emission standards for hazardous air pollutants for industrial process cooling towers. These standards apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994, and are either major sources or are integral parts of facilities that are major sources. (Subpart Q)

r. Emission standards for hazardous air pollutants for sources categories: gasoline distribution: (Stage 1). These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards. (Subpart R)

s. Emission standards for hazardous air pollutants for pulp and paper (noncombustion). These standards apply to pulping and bleaching process sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. Affected sources include pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber (using kraft, sulfite, soda, or semichemical methods); pulp secondary fiber; pulp nonwood fiber; and mechanically pulp wood fiber. (Subpart S)

t. Emission standards for hazardous air pollutants: halogenated solvent cleaning. These standards require batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of maximum achievable control technology (MACT) for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology (GACT). The subpart regulates the emissions of the following halogenated hazardous air pollutant solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. (Subpart T)

u. Emission standards for hazardous air pollutants: Group I polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of one or more elastomers including but not limited to producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene rubber by emulsion, and styrene butadiene latex. MACT is required for major sources. (Subpart U)

v. Reserved.

w. Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production. These standards apply to all existing, new and reconstructed manufacturers of basic liquid epoxy resins and manufacturers of wet strength resins that are located at a plant site that is a major source. (Subpart W)

x. National emission standards for hazardous air pollutants from secondary lead smelting. Rescinded IAB 3/18/15, effective 4/22/15.

y. Emission standards for marine tank vessel loading operations. This standard requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). (Subpart Y)

z. Reserved.

aa. Emission standards for hazardous air pollutants for phosphoric acid manufacturing. These standards apply to all new and existing major sources of phosphoric acid manufacturing. Affected processes include, but are not limited to, wet process phosphoric acid process lines, superphosphoric

acid process lines, phosphate rock dryers, phosphate rock calciners, and purified phosphoric acid process lines. (Subpart AA)

ab. Emission standards for hazardous air pollutants for phosphate fertilizers production. These standards apply to all new and existing major sources of phosphate fertilizer production plants. Affected processes include, but are not limited to, diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings. (Subpart BB)

ac. National emission standards for hazardous air pollutants: petroleum refineries. Rescinded IAB 3/18/15, effective 4/22/15.

ad. Emission standards for hazardous air pollutants for off-site waste and recovery operations. This rule applies to major sources of HAP emissions which receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. Maximum achievable control technology (MACT) is required to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks. Regulated entities include but are not limited to businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities; Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries. The regulations also apply to federal agency facilities that operate any of the waste management or recovery operations. (Subpart DD)

ae. Emission standards for magnetic tape manufacturing operations. These standards apply to major sources performing magnetic tape manufacturing operations. (Subpart EE)

af. Reserved.

ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities. These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

ah. Emission standards for hazardous air pollutants for oil and natural gas production. These standards apply to all new and existing major sources of oil and natural gas production. Affected sources include, but are not limited to, processing of liquid or gaseous hydrocarbons, such as ethane, propane, butane, pentane, natural gas, and condensate extracted from field natural gas. (Subpart HH)

ai. Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations. Rescinded IAB 3/18/15, effective 4/22/15.

aj. Emission standards for hazardous air pollutants for hazardous air pollutant (HAP) emissions from wood furniture manufacturing operations. These standards apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. (Subpart JJ)

ak. Emission standards for hazardous air pollutants for the printing and publishing industry. Existing and new major sources are required to control hazardous air pollutants (HAP) using the maximum achievable control technology (MACT). Affected units are publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. (Subpart KK)

al. Emission standards for hazardous air pollutants for primary aluminum reduction plants. Rescinded IAB 3/18/15, effective 4/22/15.

am. Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. (Part 63, Subpart MM as amended or corrected through October 11, 2017)

an. Reserved.

ao. Emission standards for tanks – level 1. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators

of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart OO)

ap. Emission standards for containers. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart PP)

aq. Emission standards for surface impoundments. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart QQ)

ar. Emission standards for individual drain systems. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart RR)

as. Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart SS)

at. Emission standards for equipment leaks—control level 1. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart TT)

au. Emission standards for equipment leaks—control level 2 standards. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart UU)

av. Emission standards for oil-water separators and organic-water separators. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart VV)

aw. Emission standards for storage vessels (tanks)—control level 2. These provisions apply to the control of air emissions from storage vessels for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions,

(Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart WW)

ax. Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations. This standard applies to hazardous air pollutants (HAPs) from heat exchange systems and waste streams at new and existing ethylene production units. (Part 63, Subpart XX)

ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT). These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY as amended or corrected through October 8, 2014)

az. to bb. Reserved.

bc. Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants. Rescinded IAB 3/18/15, effective 4/22/15.

bd. Emission standards for hazardous air pollutants for mineral wool production. These standards apply to all new and existing major sources of mineral wool production. Affected processes include, but are not limited to, cupolas and curing ovens. (Subpart DDD)

be. Emission standards for hazardous air pollutants from hazardous waste combustors. These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, hazardous waste burning lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces, except as specified in Subpart EEE. Both area sources and major sources are subject to this subpart as of April 19, 1996, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE)

bf. Reserved.

bg. Emission standards for hazardous air pollutants for pharmaceutical manufacturing. These standards apply to producers of finished dosage forms of drugs, for example, tablets, capsules, and solutions, that contain an active ingredient generally, but not necessarily, in association with inactive ingredients. Pharmaceuticals include components whose intended primary use is to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The regulations do not apply to research and development facilities. (Subpart GGG)

bh. Emission standards for hazardous air pollutants for natural gas transmission and storage. These standards apply to all new and existing major sources of natural gas transmission and storage. Natural gas transmission and storage facilities are those that transport or store natural gas prior to its entering the pipeline to a local distribution company. Affected sources include, but are not limited to, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors and delivery systems. (Subpart HHH)

bi. Emission standards for hazardous air pollutants for flexible polyurethane foam production. These standards apply to producers of slabstock, molded, and rebond flexible polyurethane foam. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development. (Subpart III)

bj. Emission standards for hazardous air pollutants: Group IV polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of the following polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin. MACT is required for major sources. (Subpart JJJ)

bk. Reserved.

bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations. These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL)

bm. Emission standards for hazardous air pollutants for pesticide active ingredient production. These standards apply to all new and existing major sources of pesticide active ingredient production that manufacture organic pesticide active ingredients (PAI), including herbicides, insecticides and fungicides. Affected processes include, but are not limited to, processing equipment, connected piping and ducts, associated storage vessels, pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors. Exempted sources include research and development facilities, storage vessels already subject to another 40 CFR Part 63 NESHAP, production of ethylene, storm water from segregated sewers, water from fire-fighting and deluge systems (including testing of such systems) and various spills. (Subpart MMM)

bn. Emission standards for hazardous air pollutants for wool fiberglass manufacturing. These standards apply to all new and existing major sources of wool fiberglass manufacturing. Affected processes include, but are not limited to, all glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, flame attenuation (FA) manufacturing lines producing bonded pipe insulation and new FA manufacturing lines producing bonded heavy-density products. (Subpart NNN)

bo. Emission standards for hazardous air pollutants for amino/phenolic resins production. These standards apply to new or existing facilities that own or operate an amino or phenolic resins production unit. (Part 63, Subpart OOO)

bp. Emission standards for hazardous air pollutants for polyether polyols production. These standards apply to all new and existing major sources of polyether polyols. Polyether polyols are compounds formed through polymerization of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form polyethers. Affected processes include, but are not limited to, storage vessels, process vents, heat exchange systems, equipment leaks and wastewater operations. (Subpart PPP)

bq. Emission standards for hazardous air pollutants for primary copper smelting. Rescinded IAB 3/18/15, effective 4/22/15.

br. Emission standards for hazardous air pollutants for secondary aluminum production. (Part 63, Subpart RRR)

bs. Reserved.

bt. Emission standards for hazardous air pollutants for primary lead smelting. Rescinded IAB 3/18/15, effective 4/22/15.

bu. Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units. Rescinded IAB 2/15/17, effective 3/22/17.

bv. Emission standards for hazardous air pollutants publicly owned treatment works (POTW). (Part 63, Subpart VVV)

bw. Reserved.

bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese. Rescinded IAB 3/14/18, effective 4/18/18.

by. and *bz.* Reserved.

ca. Emission standards for hazardous air pollutants: municipal solid waste landfills. This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA as amended or corrected through April 20, 2006)

cb. Reserved.

cc. Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast. (Part 63, Subpart CCCC)

cd. Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing). These standards apply to new and existing major

sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD as amended or corrected through October 29, 2007)

ce. Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline). These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE, as amended or corrected through July 17, 2008)

cf. Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON). These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF, as amended or corrected through July 14, 2006)

cg. Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production. (Part 63, Subpart GGGG)

ch. Emission standards for hazardous air pollutants for wet-formed fiberglass mat production. This standard applies to wet-formed fiberglass mat production plants that are major sources of hazardous air pollutants. These plants may be stand-alone facilities or located with asphalt roofing and processing facilities. (Part 63, Subpart HHHH)

ci. Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks. These standards apply to new, reconstructed, or existing affected sources, as defined in the standard, that are located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart IIII)

cj. Emission standards for hazardous air pollutants: paper and other web coating. This standard applies to a facility that is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces located at a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart JJJJ)

ck. Emission standards for hazardous air pollutants for surface coating of metal cans. These standards apply to a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of hazardous air pollutant emissions. Coating operations located at an area source are not subject to this rule. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart KKKK)

cl. Reserved.

cm. Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products. These standards apply to miscellaneous metal parts and products surface coating facilities that are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. A miscellaneous metal parts and products surface coating facility that is located at an area source is not subject to this standard. Certain sources are exempt as described in the standard. (Part 63, Subpart MMMM)

cn. Emission standards for hazardous air pollutants: surface coating of large appliances. This standard applies to a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAPs). The large appliances source category includes facilities that apply coatings to large appliance parts or products. Large appliances include “white goods” such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, electric heat pumps and most HVAC equipment intended for any application. (Part 63, Subpart NNNN)

co. Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles. These standards apply to new and existing facilities with fabric or other textile coating,

printing, slashing, dyeing, or finishing operations, or group of such operations, that are a major source of hazardous air pollutants or are part of a facility that is a major source of hazardous air pollutants. Coating, printing, slashing, dyeing, or finishing operations located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart OOOO)

cp. Emission standards for surface coating of plastic parts and products. These standards apply to new and existing major sources with equipment used to coat plastic parts and products. The surface coating application process includes drying/curing operations, mixing or thinning operations, and cleaning operations. Coating materials include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, inks, and adhesives. (Part 63, Subpart PPPP)

cq. Emission standards for hazardous air pollutants for surface coating of wood building products. These standards establish emission limitations, operating limits, and work practice requirements for wood building products surface coating facilities that use at least 1,100 gallons of coatings per year and are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. Wood building products surface coating facilities located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart QQQQ)

cr. Emission standards for hazardous air pollutants: surface coating of metal furniture. This standard applies to a metal furniture surface coating facility that is a major source, is located at a major source, or is part of a major source of HAP emissions. A metal furniture surface coating facility is one that applies coatings to metal furniture or components of metal furniture. Metal furniture means furniture or components that are constructed either entirely or partially from metal. (Part 63, Subpart RRRR)

cs. Emission standards for hazardous air pollutants: surface coating of metal coil. This standard requires that all new and existing “major” air toxics sources in the metal coil coating industry meet specific emission limits. Metal coil coating is the process of applying a coating (usually protective or decorative) to one or both sides of a continuous strip of sheet metal. Industries using coated metal include: transportation, building products, appliances, can manufacturing, and packaging. Other products using coated metal coil include measuring tapes, ventilation systems for walls and roofs, lighting fixtures, office filing cabinets, cookware, and sign stock material. (Part 63, Subpart SSSS)

ct. Emission standards for hazardous air pollutants for leather finishing operations. This standard applies to a new or existing leather finishing operation that is a major source of hazardous air pollutants (HAPs) emissions or that is located at, or is part of, a major source of HAP emissions. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. (Part 63, Subpart TTTT)

cu. Emission standards for hazardous air pollutants for cellulose products manufacturing. This standard applies to a new or existing cellulose products manufacturing operation that is located at a major source of HAP emissions. Cellulose products manufacturing includes both the miscellaneous viscose processes source category and the cellulose ethers production source category. (Part 63, Subpart UUUU)

cv. Emission standards for hazardous air pollutants for boat manufacturing. (Part 63, Subpart VVVV)

cw. Emission standards for hazardous air pollutants: reinforced plastic composites production. This standard applies to a new or an existing reinforced plastic composites production facility that is located at a major source of HAP emissions. (Part 63, Subpart WWWW)

cx. Emission standards for hazardous air pollutants: rubber tire manufacturing. This standard applies to a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions. Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. (Part 63, Subpart XXXX)

cy. Emission standards for hazardous air pollutants for stationary combustion turbines. These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY, as amended or corrected through April 20, 2006)

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ)

da. Emission standards for hazardous air pollutants for lime manufacturing plants. These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA, as amended or corrected through April 20, 2006)

db. Emission standards for hazardous air pollutants: semiconductor manufacturing. These standards apply to new and existing major sources with semiconductor manufacturing. (Part 63, Subpart BBBB)

dc. Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks. This standard applies to a new or existing coke oven battery at a plant that is a major source of HAP emissions. (Part 63, Subpart CCCCC)

dd. Emission standards for industrial, commercial and institutional boilers and process heaters. These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. (Part 63, Subpart DDDDD)*

*As of April 15, 2009, the adoption by reference of Part 63, Subpart DDDDD, is rescinded. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

de. Emission standards for hazardous air pollutants for iron and steel foundries. These standards apply to each new or existing iron and steel foundry that is a major source of hazardous air pollutant emissions. A new affected source is an iron and steel foundry for which construction or reconstruction began after December 23, 2002. An existing affected source is an iron and steel foundry for which construction or reconstruction began on or before December 23, 2002. (Part 63, Subpart EEEEE)

df. Emission standards for hazardous air pollutants for integrated iron and steel manufacturing. These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF, as amended or corrected through July 13, 2006)

dg. Emission standards for hazardous air pollutants: site remediation. These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as

specified in Subpart GGGGG. (Part 63, Subpart GGGGG, as amended or corrected through November 29, 2006)

dh. Emission standards for hazardous air pollutants for miscellaneous coating manufacturing. These standards establish emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including, but not limited to, process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems. (Part 63, Subpart HHHHH)

di. Emission standards for mercury emissions from mercury cell chlor-alkali plants. These standards apply to the chlorine production source category. This source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. These standards define two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. (Part 63, Subpart IIII)

dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing. Rescinded IAB 2/15/17, effective 3/22/17.

dk. Emission standards for hazardous air pollutants for clay ceramics manufacturing. Rescinded IAB 2/15/17, effective 3/22/17.

dl. Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing. This standard applies to an existing or new asphalt processing or asphalt roofing manufacturing facility that is a major source of hazardous air pollutants (HAPs) emissions, or is located at, or is part of a major source of HAP emissions. (Part 63, Subpart LLLLL)

dm. Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations. This standard applies to a new or existing source at a flexible polyurethane foam fabrication facility. The standard defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop slitter adhesive use or flame lamination. (Part 63, Subpart MMMMM)

dn. Emission standards for hazardous air pollutants: hydrochloric acid production. This standard applies to a new or existing HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only occasionally produce liquid HCl product at a concentration of 30 weight percent or greater. (Part 63, Subpart NNNNN)

do. Reserved.

dp. Emission standards for hazardous air pollutants: engine test cells/stands. This standard applies to an engine test cell/stand that is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile engines. (Part 63, Subpart PPPPP)

dq. Emission standards for hazardous air pollutants for friction materials manufacturing facilities. This standard applies to a new or existing friction materials manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAPs) emissions. Friction materials manufacturing facilities produce friction materials for use in brake and clutch assemblies. (Part 63, Subpart QQQQQ)

dr. Emission standards for hazardous air pollutants: taconite iron ore processing. Rescinded IAB 3/18/15, effective 4/22/15.

ds. Emission standards for hazardous air pollutants for refractory products manufacturing. This standard applies to a new or existing refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart SSSSS)

dt. Emission standards for hazardous air pollutants: primary magnesium refining. Rescinded IAB 3/18/15, effective 4/22/15.

du. Reserved.

dv. Reserved.

dw. Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources. This standard applies to a hospital that is an area source for hazardous air pollutant emissions and that owns or operates a new or existing ethylene oxide sterilization facility. (Part 63, Subpart WWWW)

- dx.* Reserved.
- dy.* *Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources.* This standard applies to new or existing electric arc furnace (EAF) steelmaking facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart YYYYYY)
- dz.* *Emission standards for hazardous air pollutants for iron and steel foundry area sources.* This standard applies to new or existing iron and steel foundries that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZ)
- ea.* Reserved.
- eb.* *Emission standards for hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities.* This standard applies to new and existing bulk gasoline terminals, pipeline breakout stations, pipeline pumping stations and bulk gasoline plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart BBBB)B
- ec.* *Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities.* This standard applies to new and existing gasoline dispensing facilities (GDF) that are area sources for hazardous air pollutant emissions. The affected equipment includes each gasoline cargo tank during delivery of product to GDF and also includes each storage tank. The equipment used for refueling of motor vehicles is not covered under these standards. (Part 63, Subpart CCCCC)
- ed.* Reserved.
- ee.* Reserved.
- ef.* Reserved.
- eg.* Reserved.
- eh.* *Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations.* This standard applies to new or existing area sources of hazardous air pollutant emissions that engage in any of the following activities: (1) paint stripping operations that use methylene chloride (MeCl)-containing paint stripping formulations; (2) spray application of coatings to motor vehicles or mobile equipment; or (3) spray application of coatings to plastic or metal substrate with coatings that contain compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni) or cadmium (Cd). (Part 63, Subpart HHHHHH)
- ei.* Reserved.
- ej.* *Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers.* This standard applies to new and existing industrial, commercial and institutional boilers that are area sources for hazardous air pollutant emissions. (Part 63, Subpart JJJJJ)
- ek.* Reserved.
- el.* *Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources.* This standard applies to acrylic and modacrylic fibers production plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart LLLLLL)
- em.* *Emission standards for hazardous air pollutants for carbon black production area sources.* This standard applies to carbon black production plants that are area sources for hazardous air pollutants. (Part 63, Subpart MMMMM)
- en.* *Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources.* This standard applies to plants that produce chromium compounds and are area sources for hazardous air pollutants. (Part 63, Subpart NNNNN)
- eo.* *Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources.* This standard applies to plants that produce flexible polyurethane foam or rebond foam, and plants that fabricate polyurethane foam, that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart OOOOO)
- ep.* *Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources.* This standard applies to lead acid battery manufacturing plants that are area sources for hazardous air pollutants. Affected sources include all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and

any other lead-emitting operation that is associated with a lead acid battery manufacturing plant. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart PPPPPP)

eq. Emission standards for hazardous air pollutants for wood preserving area sources. This standard applies to wood preserving operations that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart QQQQQQ)

er. Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources. This standard applies to any new or existing clay ceramics manufacturing facility with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 50 tons per year of wet clay, and that is an area source for hazardous air pollutant emissions. (Part 63, Subpart RRRRRR)

es. Emission standards for hazardous air pollutants for glass manufacturing area sources. This standard applies to any new or existing glass manufacturing facility that is an area source for hazardous air pollutant emissions and meets the following criteria: (1) manufactures flat glass, glass containers or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers or other shapes; and (2) uses one or more continuous furnaces to produce glass at a rate of at least 50 tons per year and that contains compounds of one or more “glass manufacturing metal HAP,” as defined in 40 CFR 63.11459, as raw materials in a glass manufacturing batch formulation. (Part 63, Subpart SSSSSS)

et. Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources. This standard applies to any new or existing secondary nonferrous metals processing facility that is an area source for hazardous air pollutant emissions. This standard applies to all crushing and screening operations at a secondary zinc processing facility and to all furnace melting operations located at any secondary nonferrous metals processing facility. (Part 63, Subpart TTTTTT)

eu. Reserved.

ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing. This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

ew. Emission standards for hazardous air pollutants for area sources: plating and polishing. This standard applies to plating and polishing activities at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart WWWWWW)

ex. Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing. This standard applies to new and existing facilities in which the primary activity or activities at the facility are metal fabrication and finishing and that are area sources for hazardous air pollutant emissions. (Part 63, Subpart XXXXXX)

ey. Reserved.

ez. Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries. This standard applies to aluminum, copper, and other nonferrous foundries at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZZ)

fa. Reserved.

fb. National emission standards for hazardous air pollutants for area sources: chemical preparations industry. This standard applies to chemical preparations at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart BBBBBB)

fc. Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing. This standard applies to paint and allied products manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart CCCCCC)

fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing. This standard applies to prepared feeds manufacturing that produces animal feed

products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different CFR reference and date for adoption by reference may be included with the subpart designation indicated in the paragraphs of this subrule. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) Definitions. For the purpose of 23.1(5)“a,” the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

“Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to rule 567—22.101(455B) only because of applicability to subparagraph 23.1(5)“a”(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.

The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 22.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the Air Quality Bureau, Department of Natural Resources, no later than September 20, 1999.

The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under subparagraph 23.1(5)“a”(3); or the owner or operator meets the conditions for control system removal specified in 40 CFR §60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5) "a"(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5) "a"(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5) "a"(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5) "a"(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5) "a"(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5) "a"(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5) "a"(3) shall be accomplished within 30 months of the date when the condition in 23.1(5) "a"(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce). This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.*

*As of November 24, 2010, the emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce) are rescinded.

c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

d. Emission guidelines for mercury for coal-fired electric utility steam generating units. Rescinded IAB 10/7/09, effective 11/11/09.

e. Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL). Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62, as amended through April 29, 2016.

23.1(6) Calculation of emission limitations based upon stack height. This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of “stack,” “a stack in existence,” “dispersion technique,” “nearby” and “excessive concentration” as set forth in 40 CFR §§51.100(ff) through (hh), (jj) and (kk) as amended through June 14, 1996, are adopted by reference.

a. “Good engineering practice (GEP) stack height” means the greater of:

- (1) Sixty-five meters, measured from the ground level elevation at the base of the stack; or
- (2) For stacks in existence on January 12, 1979, and for which the owner and operator had obtained all applicable permits or approvals required under 567—Chapter 22 and 40 CFR §52.21 as amended through June 13, 2007,

$$H_g = 2.5H$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

For all other stacks,

$$H_g = H + 1.5L$$

where:

H_g = good engineering practice stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), provided that the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the department, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. Public notification of the availability of such study and opportunity for public hearing are required prior to approval by the department.

b. The degree of emission limitation required for control of any air contaminant under this chapter shall not be affected in any manner by:

- (1) The consideration of that portion of a stack which exceeds GEP stack height; or
- (2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
- (3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combined exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase gas plume rise.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 7623B, IAB 3/11/09, effective 4/15/09; ARC 8216B, IAB 10/7/09, effective 11/11/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9154B, IAB 10/20/10, effective 11/24/10 (See Delay note at end of chapter) (See Rescission note at end of chapter); ARC 0329C, IAB 9/19/12, effective 10/24/12; ARC 1014C, IAB 9/18/13, effective 10/23/13; ARC 1561C, IAB 8/6/14, effective 9/10/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 5898C, IAB 9/8/21, effective 10/13/21; ARC 6873C, IAB 2/8/23, effective 3/15/23]

567—23.2(455B) Open burning.

23.2(1) Prohibition. No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

23.2(2) Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

23.2(3) Exemptions. The open burning exemptions specified in this subrule shall not be construed as exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following shall be permitted unless prohibited by local ordinances or regulations.

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. Flare stacks. The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2) “d” and 23.3(3) “e.”

d. Landscape waste. The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. Recreational fires. Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2) “d.” Burning rubber tires is prohibited from this activity.

f. Residential waste. Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. Training fires. For purposes of subrule 23.2(3), a “training fire” is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes

of this paragraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard of Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

- (1) A training fire on a building is conducted with the building structurally intact.
- (2) The training fire does not include the controlled burn of a demolished building.
- (3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.
- (4) Notification shall be made in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.
- (5) All asbestos-containing materials shall be removed prior to the training fire.
- (6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department’s limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)“j.”
- (7) Rubber tires shall not be burned during a training fire.

h. Paper or plastic pesticide containers and seed corn bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day’s accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation.”

For the purposes of this subrule, “agricultural structures” means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. “Agricultural structures,” for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

j. Controlled burning of a demolished building. A city, as “city” is defined in Iowa Code section 362.2(4), with approval of its council, as “council” is defined in Iowa Code section 362.2(8), may conduct

a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) *Prohibition.* The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) *Notification requirements.* For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include: the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by electronic mail at least 30 days before the proposed controlled burn commences.

(3) *Asbestos removal requirements.* All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(4) *Requirements for asphalt roofing.* During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in paragraph 23.2(3)"g."

(5) *Building size limit.* For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1700 square feet in size. For purposes of this subparagraph, "square feet" includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) *Time of day requirements.* The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) *Prohibited materials.* Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) *Limits on the number and location of burns.* For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as "person" is defined in Iowa Code section 362.2(17).

(9) *Requirements for burn access and supervision.* The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) *Record-keeping requirements.* The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under subparagraph (2). Additionally, the city shall maintain a map of the exact location of each burn site, and supporting documentation showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as “clerk” is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) *Variance from this paragraph.* In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

(12) *Compliance with other applicable environmental regulations.* Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

23.2(4) Unavailability of exemptions in certain areas. Notwithstanding 23.2(2) and 23.2(3) “b,” “d,” “f,” and “i,” no person shall allow, cause or permit the open burning of trees or tree trimmings, residential or landscape waste or agricultural structures in the cities of: Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

This rule is intended to implement Iowa Code section 455B.133.

567—23.3(455B) Specific contaminants.

23.3(1) General. The emission standards contained in this rule shall apply to each source operation unless a performance standard for the process is specified in subrule 23.1(2), in which case the performance standard shall apply.

23.3(2) Particulate matter. No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 24.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas, except as provided in 567—21.2(455B), 567—23.1(455B), 567—23.4(455B), and 567—Chapter 24.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 567—23.1(455B) and 567—23.4(455B).

TABLE I
ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE*

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
100	0.05	0.55	16,000	8.00	16.5
200	0.10	0.88	18,000	9.00	17.9
400	0.20	1.40	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
3,500	1.75	5.96	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000	1,000.00	77.6
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

*Interpolation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation

$$E=4.10 P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation

$$E=55.0 P^{0.11}-40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

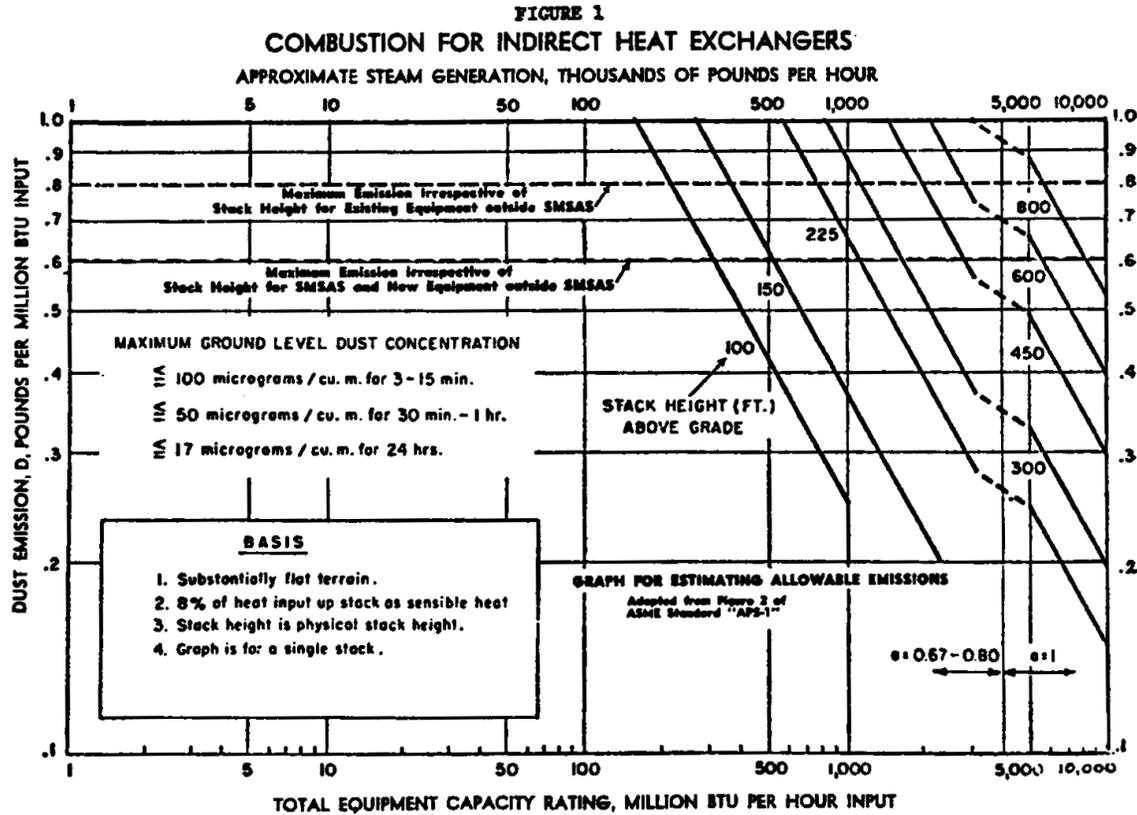
b. Combustion for indirect heating. Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November, 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with $Comax^2=50$ micrograms per cubic meter. Allowable emissions from a single stack may be estimated from Figure 1. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2) "a" shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.



(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA approved single source dispersion model using allowable emission rates and five-year worst case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under paragraph 23.3(2) "b," whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per

million Btu heat input; except that the maximum allowable emission rate for the stack serving Unit #1 of Iowa Public Service at Port Neal shall be 0.50 pound of particulate matter per million Btu heat input.

All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.

2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.

3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.

4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.

5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.

6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. Subparagraph (1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. Traditional source means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 567—23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 567—23.4(455B), but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," [available from the department] adopted by the commission on May 19, 1981.

(3) Reclassified areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of subparagraph (2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 24.

(1) *Residential heating equipment.* Residential heating equipment serving dwellings of four family units or less is exempt.

(2) *Gasoline-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) *Diesel-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity, for longer than five consecutive seconds.

(4) *Diesel-powered locomotives.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) *Startup and testing.* Initial start and warmup of a cold engine, the testing of an engine for trouble, diagnosis or repair, or engine research and development activities, is exempt.

(6) *Uncombined water.* The provisions of this paragraph shall apply to any emission which would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) Sulfur compounds. The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Lousia, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in subparagraph 23.3(3) "a"(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit (i.e., a unit which was not in operation or for which components had not been purchased, or which was not under construction prior to September 23, 1970) which has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

(4) Subparagraphs (1) through (3) notwithstanding, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc," respectively.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

(3) Notwithstanding this paragraph, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc."

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

This rule is intended to implement Iowa Code section 455B.133.
[ARC 2949C, IAB 2/15/17, effective 3/22/17]

567—23.4(455B) Specific processes.

23.4(1) General. The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2) “a” and 23.3(2) “b” shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this section is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 567—23.3(455B) may be required in such instance.

23.4(2) Asphalt batching plants. No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) Cement kilns. Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) Cupolas for metallurgical melting. The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in paragraph 23.3(2) “a,” except as provided in 567—Chapter 24.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from Table II of these rules, except as provided in 567—Chapter 24.

TABLE II
ALLOWABLE EMISSIONS FROM
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30

Process weight rate (lb/hr)	Allowable emission (lb/hr)
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

23.4(5) *Electric furnaces for metallurgical melting.* The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(6) *Sand handling and surface finishing operations in metal processing.* This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process which has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

23.4(7) *Grain handling and processing plants.* The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as “country grain elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

23.4(8) *Lime kilns.* No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(9) *Meat smokehouses.* No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses, which consume more than ten pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

23.4(10) *Phosphate processing plants.*

a. Phosphoric acid manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of phosphoric acid that was in existence on October 22, 1974, in a

manner that produces more than 0.04 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

b. Diammonium phosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of diammonium phosphate that was in existence on October 22, 1974, in a manner that produces more than 0.15 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

e. Notwithstanding “*a*” through “*d*,” no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material including, but not limited to, phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

f. “Fluoride” means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

23.4(11) *Portland cement concrete batching plants.* No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(12) *Incinerators.* A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

a. Particulate matter. A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

b. Visible emissions. A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 567—65.15(455B) to 567—65.17(455B).

23.5(2) Criteria for approval of industrial anaerobic lagoons constructed or expanded on or after July 1, 1982.

a. Lagoons designed to treat 100,000 gallons per day (gpd) or less shall be located at least 1,250 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

b. Lagoons designed to treat more than 100,000 gallons per day (gpd) shall be located at least 1,875 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

c. The criteria in subrule 23.5(2) shall apply except in situations in which Iowa Code section 455B.134(3) “e”(2) is successfully invoked.

d. Compliance with the requirements of subrule 23.5(2) shall not constitute an exemption from compliance with any other applicable environmental regulations. In particular, compliance with these requirements shall not absolve any person from compliance with the requirements set forth in 567—Chapter 64 that are applicable to industrial anaerobic lagoons.

This rule is intended to implement Iowa Code section 455B.133.
[ARC 5051C, IAB 6/17/20, effective 7/22/20]

567—23.6(455B) Alternative emission limits (the “bubble concept”). Emission limits for individual emission points included in 567—23.3(455B) (except 23.3(2) “d,” 23.3(2) “b”(3), and 23.3(3) “a”(3)) and 567—23.4(455B) (except 23.4(12) “b” and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12). Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 567—23.3(455B) to 567—23.6(455B) are intended to implement Iowa Code section 455B.133.

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⁰ Two or more ARCs

¹ Objection, see filed rule [DEQ, 4.2(4)] published IAC Supp. 1/22/77, 3/9/77.

² Effective date of 23.2(4) delayed 70 days by the Administrative Rules Review Committee on 9/14/83.

³ 11/24/10 effective date of 23.1(4), introductory paragraph, and 23.1(4)“*ev*” and “*fa*” to “*fd*” delayed 70 days by the Administrative Rules Review Committee at its meeting held November 9, 2010.

⁴ Amendment to 23.1(4), introductory paragraph, (ARC 9154B, Item 4) rescinded by Executive Order Number 72 on 4/4/11. Amendment removed and prior language restored IAC Supplement 4/20/11.

CHAPTER 25
MEASUREMENT OF EMISSIONS

[Prior to 7/1/83, DEQ Ch 7]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—25.1(455B) Testing and sampling of new and existing equipment.

25.1(1) *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btus per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective. The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to install, calibrate, maintain and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator or the type of control equipment utilized would warrant such monitoring.

25.1(2) and **25.1(3)** Reserved.

25.1(4) *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate continuous monitoring equipment to monitor sulfur dioxide emissions. Said monitoring equipment shall conform to the minimum performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective.

25.1(5) *Maintenance of records of continuous monitors.* The owner or operator of any facility which is required to install, calibrate, maintain and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

25.1(6) *Reporting of continuous monitoring information.* The owner or operator of any facility required to install a continuous monitoring system or systems shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. This provision shall not excuse compliance with more stringent applicable reporting requirements. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

25.1(7) *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

a. General. The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the place, the name of the person who will conduct the tests and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department shall not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be

submitted to the department no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks of the completion of the testing.

b. New equipment. Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

c. Existing equipment. The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

25.1(8) Tests by department. Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required. Analytical results shall be furnished to the owner.

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. Permit and compliance demonstration requirements. After October 24, 2012, all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before October 24, 2012, and the

demonstration or test was not required to be completed before October 24, 2012, then the methodology referenced in this subrule applies retroactively.

25.1(10) Exemptions from continuous monitoring requirements. The owner or operator of any source is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

a. An affected source is subject to a new source performance standard promulgated in 40 CFR Part 60 as amended through September 28, 2007.

b. An affected steam generator had an annual capacity factor for calendar year 1974, as reported to the Federal Power Commission, of less than 30 percent or the projected use of the unit indicates the annual capacity factor will not be increased above 30 percent in the future.

c. An affected steam generator is scheduled to be retired from service within five years of the date these rules become effective.

d. Rescinded IAB 1/20/93, effective 2/24/93.

e. The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

25.1(11) Extensions. The owner or operator of any source may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

25.1(12) Continuous monitoring of sulfur dioxide from emission points involved in an alternative emission control program. The owner or operator of any facility applying for an alternative emission control program under 567—subrule 22.7(1) that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B, as amended through September 28, 2007). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19; ARC 5051C, IAB 6/17/20, effective 7/22/20; ARC 5898C, IAB 9/8/21, effective 10/13/21; ARC 6873C, IAB 2/8/23, effective 3/15/23]

567—25.2(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F and K as amended through August 30, 2016, are adopted by reference.

[ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18]

567—25.3(455B) Mercury emissions testing and monitoring. Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving, at any time since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale is an affected source under the provisions of this rule.

The provisions of this rule expire on April 22, 2015, except for any affected facility that receives an extension to comply with the emission standards for hazardous air pollutants: coal- and oil-fired electric utility steam generating units (EGUs) (40 CFR Part 63, Subpart UUUUU, commonly known as mercury air toxics standards (MATS)). Any facility receiving an extension of the MATS compliance date shall continue to comply with the provisions of this rule until the date the facility is required to comply with MATS or, alternatively, is no longer subject to the MATS compliance requirements. However, facilities complying with the requirements of this rule as specified in subrule 25.3(3), continuous emissions monitoring systems (CEMS), may submit a written request to the department to discontinue concurrent, annual stack tests. The department will evaluate and grant requests on a case-by-case basis, based upon previous stack test results and how recent the last stack test occurred or other extenuating circumstances, such as those that may cause testing conditions to be unrepresentative of normal operations or cause

tests to be unsafe to perform. If the department grants a request, the facility will be required to continue operating CEMS and conduct relative accuracy test audits (RATAs), as specified in subrule 25.3(3), until the facility is required to comply with MATS or, alternatively, is no longer subject to MATS compliance requirements.

25.3(1) *Testing frequency and methods.* The owner or operator of an affected source shall complete one stack test for mercury in each calendar quarter for four consecutive calendar quarters. Testing shall commence no later than the third calendar quarter in 2010 (July 1 – September 30). At such time as four consecutive quarterly stack tests are completed and the test results are approved in writing by the department, the owner or operator of an affected source shall complete one stack test for mercury in each subsequent calendar year. Stack testing to fulfill the requirements of this subrule shall meet the following conditions:

a. Stack testing shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

b. The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

25.3(2) *Low mass emitter (LME).* In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a written request to the department to be classified as a low mass emitter (LME) for mercury. To be eligible for LME classification by the department, the owner or operator shall meet the following conditions:

a. The owner or operator shall complete at least one stack test prior to July 1, 2010, according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

b. The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

c. Using the highest mercury concentration measured from any of the stack test runs, the owner or operator shall submit documentation to the department sufficient to demonstrate that the potential annual mercury emissions from the affected source are less than or equal to 29 pounds (464 ounces) per year.

d. Upon written notification of LME classification by the department, the owner or operator of an affected source shall be exempt from the requirements of 25.3(1).

e. If at any time the potential annual mercury emissions from the affected source exceed 29 pounds per year, it shall be the responsibility of the owner or operator of the affected source to notify the department in writing within 30 days.

25.3(3) *Continuous emission monitoring systems (CEMS).* In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a request to the

department to record mercury emissions data using a continuous emission monitoring system (CEMS). To be eligible for department approval to use CEMS, the owner or operator shall meet the following conditions:

a. The owner or operator shall complete at least one stack test concurrently with operating and recording data from the CEMS prior to September 30, 2010, and thereafter on an annual basis, to demonstrate that the CEMS are providing accurate emissions data, as follows:

(1) The stack test conducted concurrently with the CEMS shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

(2) While conducting the concurrent stack test, the owner and operator shall perform a relative accuracy test audit (RATA) and other CEMS certification procedures according to an approved EPA performance protocol. If an approved EPA performance protocol is not available, the owner or operator may submit an alternative CEMS certification protocol in writing to the department for approval. Department approval must be received before the owner or operator conducts the CEMS certification.

b. The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test conducted concurrently with CEMS. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. Protocols for the stack testing and for the concurrent CEMS operation and data collection shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Results of the tests and CEMS certification shall be submitted in writing to the department in the form of a comprehensive test and CEMS certification report within six weeks of the completion of the testing.

c. The owner or operator of an affected source shall comply with the provisions of 25.3(1) until such time as the department approves use of CEMS.

d. Upon receiving department approval for CEMS use, the owner or operator of an affected source shall operate and record CEMS data, including calibrating each individual CEMS for zero and span on a daily basis, and shall provide all CEMS data to the department upon written request. CEMS certification shall be completed on an annual basis according to the procedures specified in paragraph 25.3(3) "a."

25.3(4) *EPA-required stack testing for mercury.* If the owner or operator of an affected source is required by EPA to complete stack testing for mercury, the owner or operator may submit a written request to the department that the EPA-required stack test be allowed to fulfill all or part of the testing requirements specified in 25.3(1). The department shall consider each such request on a case-by-case basis.

25.3(5) *Affected sources subject to Section 112(g).* The owner or operator of an affected source subject to the requirements of Clean Air Act Section 112(g) shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

[ARC 8216B, IAB 10/7/09, effective 11/11/09; ARC 1913C, IAB 3/18/15, effective 4/22/15]

These rules are intended to implement Iowa Code section 455B.133.

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- [Filed ARC 1913C (Notice ARC 1795C, IAB 12/24/14), IAB 3/18/15, effective 4/22/15]
- [Filed ARC 2949C (Notice ARC 2799C, IAB 11/9/16), IAB 2/15/17, effective 3/22/17]
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- [Filed ARC 4335C (Notice ARC 4178C, IAB 12/19/18), IAB 3/13/19, effective 4/17/19]
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- [Filed ARC 6873C (Notice ARC 6631C, IAB 11/2/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 28
 AMBIENT AIR QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 10]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), 73 Federal Register 66964-67062 (November 12, 2008), 75 Federal Register 6474-6537 (February 9, 2010), 75 Federal Register 35520-35603 (June 22, 2010), 78 Federal Register 3086-3287 (January 15, 2013), and 80 Federal Register 65291-65468 (October 26, 2015). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws and regulations.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9154B, IAB 10/20/10, effective 11/24/10; ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 6873C, IAB 2/8/23, effective 3/15/23]

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[Filed ARC 2949C (Notice ARC 2799C, IAB 11/9/16), IAB 2/15/17, effective 3/22/17]

[Filed ARC 6873C (Notice ARC 6631C, IAB 11/2/22), IAB 2/8/23, effective 3/15/23]

¹ See SJR 5 of the 2003 Session of the Eightieth General Assembly.

PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department “umbrella” include Professional Licensure[645], Dental Board[650], Medical Board[653],
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[Prior to 7/29/87, Health Department[470], Ch 9]

641—9.1(135) Scope. The scope of this chapter is to describe the standards for outpatient diabetes self-management education programs and the procedures programs must follow for certification by the Iowa department of public health that will allow for third-party reimbursement.

641—9.2(135) Definitions. For the purpose of these rules, the following terms shall have the meaning set forth below.

“*AADE*” means the American Association of Diabetes Educators.

“*Accredited*” means that a program is currently accredited by the Association of Diabetes Care and Education Specialists (ADCES)/American Association of Diabetes Educators (AADE).

“*ADA*” means the American Diabetes Association.

“*ADCES*” means the Association of Diabetes Care and Education Specialists.

“*Certification*” means the review and approval and assignment of a program site number of an outpatient diabetes education program which meets minimum standards.

“*Certified diabetes care and education specialist*” means a person currently certified by the Certification Board for Diabetes Care and Education.

“*Certified diabetes educator*” means a person currently certified by the National Certification Board for Diabetes Educators.

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

“*Diabetes mellitus*” includes the following:

1. “Type I diabetes” means insulin-dependent diabetes (IDDM) requiring lifelong treatment with insulin.

2. “Type II diabetes” means noninsulin-dependent diabetes often managed by food plan, exercise, weight control, and in some instances, oral medications or insulin.

3. “Gestational diabetes” means diabetes diagnosed during pregnancy.

4. “Impaired glucose tolerance” means a condition in which blood glucose levels are higher than normal, diagnosed by a physician or physician assistant, and treated with food plan, exercise or weight control.

5. “Secondary diabetes” means diabetes induced by drugs or chemicals as well as by pancreatic or endocrine disease and treated appropriately.

“*Director*” means the director of the Iowa department of public health.

“*Licensed dietitian*” means a person currently licensed to practice dietetics under Iowa Code chapter 152A.

“*Participant*” means a patient who is referred to, is active in, or has completed the educational diabetes program.

“*Pharmacist*” means a person currently licensed to practice pharmacy under Iowa Code chapter 155A.

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

“*Physician assistant*” means a person currently licensed under Iowa Code chapter 148C.

“*Primary instructor*” means an instructor with major or broad teaching responsibility.

“*Professional health educator*” means a person having successfully completed a degree designated “health education” from an accredited college or university.

“*Program*” means an outpatient diabetes self-management education program in which instruction shall be provided which shall enable people with diabetes and their families to understand the diabetes disease process and the daily management of diabetes.

“*Program coordinator*” means the person responsible for the direction and supervision of a program including, but not limited to, planning, arranging implementation, and assuring quality.

“Program staff” means the program coordinator, program physician, primary and supporting instructors, and advisory committee members.

“Recognized” means that a program is currently recognized by the American Diabetes Association.

“Registered nurse” means a person currently licensed to practice professional nursing under Iowa Code chapter 152.

“Standards” means the outpatient diabetes education program standards developed by the department.

“Supporting instructor” means an instructor who teaches only one or two specific topics of the program, on a voluntary or paid basis.

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—9.3(135) Powers and duties. The department shall be responsible for taking the following actions:

9.3(1) Develop minimum standards for certification aligned with the National Standards for Diabetes Self-Management Education and Support published by the ADA and the ADCES/AADE.

9.3(2) Annually review and update the standards as needed, and provide revised standards to programs and others.

9.3(3) Develop certification packages.

a. Certification packages shall be provided on request to programs and to the general public.

b. The package shall contain certification procedures, rules, and standardized forms.

c. The certification package is available from the Bureau of Chronic Disease Prevention and Management, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

9.3(4) Evaluate each application submitted and determine adequacy of program for certification.

9.3(5) Assign a site number and an expiration date and issue a certificate to each program that meets the standards. A certificate shall be valid for four years from issuance unless specified otherwise on the certificate or unless sooner revoked.

9.3(6) Maintain a list of certified programs.

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.4(135) Application procedures for American Diabetes Association-recognized and Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators-accredited programs. When a program is recognized by the ADA or accredited by the ADCES/AADE, the program shall apply for certification by submitting the following to the department:

9.4(1) A copy of the Certificate of Recognition provided by the ADA or the Certificate of Accreditation provided by the ADCES/AADE.

9.4(2) The name, address and telephone number for the program.

9.4(3) The name and email address of the program coordinator and the names of the program physician, primary and supporting instructors, and advisory committee members.

9.4(4) Copies of current licenses for all Iowa-licensed professionals named in 9.4(3).

9.4(5) The name and a copy of both the Iowa licenses and continuing education hours of any pharmacist who serves as program staff. A pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the education requirements in 9.8(6), 9.8(7) or 9.8(8).

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.5(135) Renewal procedures for American Diabetes Association-recognized and Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators-accredited programs. Programs shall renew their certification every four years, at least 30 days prior to the expiration date. To apply for renewal of certification, the ADA-recognized program or the ADCES/AADE-accredited program shall submit the following to the department:

9.5(1) A copy of the new ADA Certificate of Recognition or ADCES/AADE Certificate of Accreditation.

9.5(2) The name, address and telephone number for the program.

9.5(3) The name and email address of the program coordinator and the names of the program physician, primary and supporting instructors, and advisory committee members.

9.5(4) Copies of current licenses for all Iowa-licensed professionals named in 9.5(3).

9.5(5) The name and a copy of both the Iowa licenses and continuing education hours of any pharmacist who serves as program staff. A pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the continuing education requirements in 9.9(7).

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.6(135) Application procedures for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators.

9.6(1) Each program shall apply for certification with the department.

9.6(2) Applications from programs not recognized by the ADA or accredited by the ADCES/AADE shall provide the following information:

a. Name, address and telephone number for the program, program physician and program coordinator and email address of the program coordinator. The names of instructional staff and advisory committee members and copies of their current Iowa licenses shall also be included.

b. Identification of the target population, an estimate of the program caseload, estimated number of programs to be conducted annually, minimum and maximum class size, and a calendar identifying the hours per day and number of days per week scheduled in individual or group instruction to meet the minimum course requirements.

c. A description of goals and objectives, participant referral mechanism, and means of coordinating between the community, physicians, and program staff.

d. Evaluation methods designed by individual programs and samples of documents to be used.

e. A description of the curriculum designed to instruct the participant with diabetes how to achieve self-management competency. The curriculum shall cover the same content areas as are required by the ADA for recognition or the ADCES/AADE for accreditation including:

(1) Diabetes overview: includes content about the diabetes disease process, pathophysiology and treatment/management options.

(2) Stress and psychological adjustment: includes developing personal strategies to address psychological issues, healthy coping, and problem solving.

(3) Family involvement and social support: includes strategies for safety and risk reduction and creating healthy environments and social supports.

(4) Nutrition: includes incorporating nutritional management (healthy eating) into lifestyle.

(5) Exercise and activity: includes incorporating physical activity (being active) into lifestyle.

(6) Medications: includes using medications safely and for maximum therapeutic benefit.

(7) Monitoring and use of results: includes monitoring blood glucose and other health indicators or parameters and interpreting and using the results for self-management decision making.

(8) Reducing risks: includes prevention, detection, and treatment of acute complications (including hypoglycemia, hyperglycemia, diabetic ketoacidosis, sick days, and severe weather or crisis supply management) and chronic complications (including foot, eye and dental; exams; immunizations; and kidney function testing as indicated).

(9) Behavior change strategies, goal setting, risk-factor reduction, and problem solving: includes personal goals and strategies to address risks and build positive habits.

(10) Preconception care, pregnancy, and gestational diabetes.

(11) Use of health care systems and community resources.

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.7(135) Diabetes program management for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators.

9.7(1) Pertinent information related to the recent medical history, physical examination, and test results performed by the participant's health care provider shall be provided when the participant is referred to the program. Program staff shall remain in contact with the participant's health care provider and shall make recommendations relative to the medical care and treatment of the participant's diabetes when appropriate.

9.7(2) When the participant completes the program, arrangements shall be made by program staff for optimal follow-up care.

9.7(3) Program staff members shall take an active role in the care of the participant's diabetes during the course of the program to optimize diabetes control. The program staff shall be prepared to make necessary recommendations to the referring health care provider in the participant's diabetes management which may include the following:

- a. Changes in the insulin regimen.
- b. Changes in the medications.
- c. Changes in the food plan.
- d. Changes in exercise.

9.7(4) Written materials supporting the program curriculum are to be made available to the participants. Educational materials from commercial sources shall be carefully evaluated by staff and be consistent with the program curriculum.

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.8(135) Program staff for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators.

9.8(1) A program coordinator and a program physician shall be designated.

a. The program coordinator shall provide direction and supervision of the program, including, but not limited to, planning, arranging implementation, and assuring quality. If the program coordinator is an instructor, the program coordinator shall be a health care professional and meet the requirements for primary or supporting instructor.

b. The program physician shall provide medical direction for the program. The program physician shall maintain contact with the participant's attending physician and shall make recommendations relative to the medical care and treatment of the participant's diabetes where appropriate.

9.8(2) The program shall have an advisory committee composed of at least one physician, one registered nurse, one licensed dietitian and one pharmacist to oversee the program. It is recommended the advisory committee include an individual with behavioral science expertise, a consumer, and a community representative. The advisory committee shall participate in the annual planning process, including determination of target audience, program objectives, participant access mechanisms, instructional methods, resource requirements, participant follow-up mechanisms, and program evaluation.

9.8(3) The primary instructors shall be one or more of the following health care professionals: physicians, physician assistants, registered nurses, licensed dietitians, and pharmacists who are knowledgeable about the disease process of diabetes and the treatment of diabetes. If there is only one primary instructor, there shall be at least one supporting instructor. The supporting instructor shall be from one of the four professions listed as possible primary instructors, but a different profession from the single primary instructor.

9.8(4) The program may have additional supporting instructors including, but not limited to, dentist, exercise physiologist, health educator, ophthalmologist, pediatric diabetologist, podiatrist, psychologist, psychiatrist, or social worker.

9.8(5) The names of the program physician, program coordinator, all primary and supporting instructors, and advisory committee members shall be included with the program application, with copies of their current Iowa licenses.

9.8(6) All primary instructors shall show evidence of knowledge about the disease process of diabetes and the treatment and management of people with diabetes by documentation of one or more of the following:

a. Within the last four years, completion of a minimum of 32 hours of continuing education in diabetes, diabetes management, or diabetes education.

b. Equivalent training or experience including, but not limited to, endocrinology fellowship training or masters level preparation in diabetes nursing/nutrition. Unsupervised teaching of patients is not an acceptable equivalent.

c. Current certification as a certified diabetes care and education specialist/certified diabetes educator.

9.8(7) All supporting instructors shall show evidence of knowledge about the disease process of diabetes and the treatment and management of people with diabetes by documentation of completion of a minimum of 16 hours of continuing education in diabetes, diabetes management, or diabetes education within the last four years or have current certification as a certified diabetes care and education specialist/certified diabetes educator.

9.8(8) The four professionals required in 9.8(2) to be on the advisory committee shall have completed eight hours of continuing education in diabetes within the past four years.

9.8(9) The program coordinator shall determine that each primary or supporting instructor has current licensure or registration required to practice in Iowa.

9.8(10) The program coordinator shall determine that new primary or supporting instructors, who join the program staff during a certification period, meet the requirements for initial certification in 9.8(6) or 9.8(7) within six months of when they join the program staff.

[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—9.9(135) Renewal application procedures for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators. Every four years, programs shall provide the following information to the department at least 30 days prior to the expiration date.

9.9(1) Name, address and telephone number of the program, program physician and program coordinator; email address of the program coordinator; and names of instructional staff and advisory committee members and copies of current licenses for all Iowa-licensed professionals.

9.9(2) Identification of the target population, an estimate of program caseload, and the number of participants served in the certification period.

9.9(3) A description of goals and objectives, participant referral mechanism, and means of coordinating between the community, physicians, and program staff.

9.9(4) A description of the program evaluation process.

9.9(5) A description of any changes from the previous application.

9.9(6) A list of new program staff by name, license number or registration number, and position with the program. New staff who will serve as primary instructors shall submit documentation of their training in diabetes as addressed in 9.8(6). New staff serving as supporting instructors shall submit documentation of their training as addressed in 9.8(7).

9.9(7) Documentation of continuing education hours accrued since the previous application for current staff and new staff.

a. All primary instructors shall complete a minimum of 24 hours of continuing education in diabetes, diabetes management, or diabetes education within the past four years.

b. All supporting instructors shall complete a minimum of 12 hours of continuing education in diabetes, diabetes management, or diabetes education within the past four years.

c. The four professionals required in 9.8(2) to be on the advisory committee shall complete a minimum of seven hours of continuing education in diabetes within the past four years.
[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 4074C, IAB 10/10/18, effective 11/14/18; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.10(135) Annual report. Summary data shall be completed annually by each program and sent to the department at a time determined by the department. The data shall include but not be limited to the number of times the program was presented, the number of outpatients that participated, and a summarized description of program participants including type of diabetes, age, race and sex.
[ARC 9249B, IAB 12/1/10, effective 1/5/11; ARC 6268C, IAB 4/6/22, effective 5/11/22]

641—9.11(135) Enforcement.

9.11(1) The department may annually or more frequently conduct on-site visits of certified programs.

9.11(2) The department shall furnish a written report of each visit to the program coordinator.

9.11(3) Programs determined by the department to no longer meet the minimum standards for certification shall be given 30 days following receipt of the department's notification of deficiencies to submit a plan of correction.

9.11(4) Notification of cancellation shall be provided to the Iowa insurance division of the Iowa department of commerce and the public.

641—9.12(135) Complaints.

9.12(1) The department shall accept complaints of alleged problems relating to certified outpatient diabetes self-management programs. The information shall state in a reasonably specific manner the basis of the complaints and be presented in writing, in person or by telephone to: Bureau of Chronic Disease Prevention and Management, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; (515)281-5616.

9.12(2) The department shall, within 20 working days of the receipt of the complaint, contact the program coordinator for initial evaluation of the specific matters alleged in the complaint. The program shall receive a written report of the results of department activities relating to the complaint investigation. The complainant shall be promptly informed of the results of the investigation or any action taken by the department.

[ARC 9249B, IAB 12/1/10, effective 1/5/11]

641—9.13(135) Appeal process.

9.13(1) Denial. Programs shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for denial. The denial shall become effective 30 days after receipt by the aggrieved party unless the grievant within that 30-day period gives written notice to the department requesting a hearing in which case the notice shall be deemed to be suspended.

9.13(2) Revocation. Programs shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for revocation. The revocation shall become effective 30 days after receipt by the aggrieved party unless the grievant within that 30-day period gives written notice to the department requesting a hearing in which case the notice shall be deemed to be suspended.

9.13(3) Contested case. 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 rule 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.

641—9.14(135) Formal contest.

9.14(1) Hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

9.14(2) Decision of administrative law judge. When the administrative law judge makes a proposed decision and order, it shall be served by 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 9.14(3).

9.14(3) *Appeal to director.* 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.

9.14(4) *Record of hearing.* 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.

9.14(5) *Decision of director.* 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 certified mail, return receipt requested, or by personal service.

9.14(6) *Exhausting administrative remedies.* It is not necessary to file an application or 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.

9.14(7) *Petition for judicial review.* 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 director by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

[ARC 9249B, IAB 12/1/10, effective 1/5/11]

These rules are intended to implement Iowa Code section 135.11.

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¹ Objection to 9.6(2) filed 7/11/85, IAB 7/31/85.

² See IAB, Inspections and Appeals Department.

CHAPTER 11
HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

641—11.1(139A,141A) Definitions. For the purpose of rules 641—11.1(139A,141A) to 641—11.34(915), the following definitions shall apply:

“*AIDS*” means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*AIDS-related condition*” means any condition resulting from HIV infection that meets the definition of AIDS as established by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Blood bank*” means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*CLIA*” means Clinical Laboratory Improvement Amendments as administered by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

“*Clinical laboratory*” means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

“*Confirmed positive test*” means a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

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

“*Director of a plasma center, blood bank, clinical laboratory, organ procurement organization, or public health laboratory*” means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

“*Emergency medical services personnel*” means “emergency medical care provider” as defined in 641—131.1(147A).

“*Health care facility*” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

“*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ procurement organization, or other health care institution.

“*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

“*HIV infection*” means having acquired the human immunodeficiency virus.

“*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

“*Laboratory*” means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

“*Physician*” means a person currently licensed pursuant to Iowa Code chapter 148.

“*Physician assistant*” means a person currently licensed under Iowa Code chapter 148C.

“*Plasma center*” means a facility that conducts plasmapheresis.

“Plasmapheresis” means the removal of blood from a human being to obtain plasma with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

“Public health laboratory” means a laboratory operated by an agency of city, county or state government for the purpose of supporting disease control activities.

“Sexually transmitted disease or infection” means “sexually transmitted disease or infection” as defined in 641—1.1(139A).

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—11.2(141A) HIV testing—obtaining consent—voluntary HIV-related tests for adults who are not pregnant.

11.2(1) Prior to conducting a voluntary HIV-related test on an adult, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.2(2) All adults who are able must give consent for an HIV test, but a separate written consent solely for the purpose of HIV testing shall not be required. If an adult signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an adult has not signed a general consent form for the performance of medical tests and procedures, or if the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing the HIV-related test.

11.2(3) If an adult is unable to give consent, the adult’s legal guardian may provide oral or written consent. If the adult’s legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.2(4) Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.3(139A,141A) HIV testing—obtaining consent—voluntary HIV-related tests for minors who are not pregnant.

11.3(1) A minor shall have the legal capacity to act and give consent to the provision of medical care or services for the prevention, diagnosis, or treatment of HIV by a hospital, clinic, or health care provider. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

11.3(2) Prior to conducting a voluntary HIV-related test on a minor, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.3(3) A minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor’s legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

11.3(4) Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

11.3(5) If a minor is unable to provide consent for an HIV-related test, the minor’s legal guardian may provide oral or written consent for the minor. If the minor’s legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.3(6) Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection. [ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.4(141A) HIV testing—obtaining consent—voluntary HIV-related tests for pregnant women.

11.4(1) Health care providers that offer prenatal care to women shall provide HIV testing to all pregnant women, including minors, as part of the routine panel of prenatal tests. The health care provider requesting the HIV test of a pregnant woman shall notify the pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

11.4(2) The testing shall occur as early as possible during each pregnancy.

11.4(3) The health care provider requesting the test shall make information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus available to all pregnant women.

11.4(4) A pregnant woman who is a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

11.4(5) If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record by the health care provider. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

11.4(6) Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a pregnant woman with HIV infection.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.5(141A) HIV test results—post-test counseling.

11.5(1) At any time that the subject of an HIV-related test is informed of a confirmed positive test result, the health care provider who requested the test or other designated personnel shall initiate counseling concerning the emotional and physical health effects of HIV infection. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject of the test shall be given information concerning where to obtain additional counseling. If a legal guardian of the subject of the test provided consent to the test, the counseling shall be given to the legal guardian.

11.5(2) Post-test counseling requirements do not apply to any of the following:

a. The performance of an HIV-related test by a health care provider or health facility when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in Iowa Code chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to Iowa Code section 505.15.

c. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is deceased and a documented significant exposure has occurred.

d. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is unable to provide consent and the health care provider or health facility provided consent for the subject of the test.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department.

11.6(1) The following constitute reportable events related to HIV infection:

a. A test result indicating HIV infection, including:

(1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.

(2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including nondetectable levels.

b. AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte counts.

c. Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger.

d. Death resulting from an AIDS-related condition, or death of a person with HIV infection.

11.6(2) Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a plasma center, blood bank, organ procurement organization, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department.

11.6(3) Within seven days of the receipt of a test result indicating HIV infection, which has been confirmed as positive according to prevailing medical technology, or immediately after the initial examination or treatment of a person infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

11.6(4) Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician or physician assistant shall make a report to the department on a form provided by the department.

11.6(5) Within seven days of the death of a person with HIV infection, the attending physician or physician assistant shall make a report to the department on a form provided by the department.

11.6(6) Within seven days of the birth of an infant to an HIV-infected mother or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger, the attending physician shall make a report to the department on a form provided by the department.

11.6(7) The report shall include:

a. The person's name, address, date of birth, gender, race and ethnicity, marital status, and telephone number.

b. The name, address and telephone number of the plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test, if a test was performed.

c. The address of the physician or other health care provider who requested the test.

d. If the person is female, whether the person is pregnant.

11.6(8) All persons who experience a reportable event while receiving services in the state, regardless of state of residence, shall be reported.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—11.7(141A) Penalties.

11.7(1) A director of a plasma center, blood bank, organ procurement organization, clinical laboratory or public health laboratory or a physician or other health care provider who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department

shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

11.7(2) A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under these rules is subject to a civil penalty of not more than \$1,000 per occurrence. The department shall not impose the penalty without prior written notice and opportunity for hearing.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.8(141A) Immunity. An individual who makes a report in good faith pursuant to these rules is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.1(139A,141A) to 641—11.8(141A) are intended to implement Iowa Code sections 139A.35, 141A.4, 141A.6, 141A.7 and 141A.10.

641—11.9 and 11.10 Reserved.

TRAINING PROGRAMS

641—11.11(135) Purpose. The purpose of this rule is to describe the required content of HIV and AIDS training programs and to identify the groups of personnel involved.

11.11(1) *Nonemergency personnel.* Before an initial assignment of tasks where occupational exposure to blood or other potentially infectious materials may take place and at least annually thereafter, all supervisory and patient care personnel of any agency listed below shall complete training concerning blood-borne pathogens, including human immunodeficiency virus and viral hepatitis, consistent with standards from the Occupational Safety and Health Administration of the U.S. Department of Labor:

- a. A licensed hospice,
- b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or
- c. An agency which provides respite care services.

11.11(2) *Nonemergency personnel training content.* Training programs must address the following topics:

- a. Symptoms and modes of transmission of blood-borne diseases,
- b. Location and handling of personal protective equipment,
- c. Information on the hepatitis B vaccine, and
- d. Follow-up procedures in the event of an exposure.

11.11(3) *Emergency and law enforcement personnel.* Before an initial assignment of tasks where occupational exposure to blood or other potentially infectious materials may take place and at least annually thereafter, all emergency medical services personnel, firefighters, and law enforcement personnel shall complete training concerning blood-borne pathogens, including human immunodeficiency virus and viral hepatitis, consistent with standards from the Occupational Safety and Health Administration of the U.S. Department of Labor.

11.11(4) *Emergency and law enforcement personnel training content.* Training programs must address the following topics:

- a. Symptoms and modes of transmission of blood-borne diseases,
- b. Location and handling of personal protective equipment,
- c. Information on the hepatitis B vaccine, and
- d. Follow-up procedures in the event of an exposure.

This rule is intended to implement Iowa Code section 135.11.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.12 to 11.14 Reserved.

PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

641—11.15(139A,141A) Purpose. The purpose of rules 641—11.15(139A,141A) to 641—11.18(141A) is to establish a voluntary partner notification program, including a procedure to allow a physician, physician assistant or the department to notify an identifiable third party of an HIV-infected person directly that the party has been exposed to HIV when the HIV-infected person will not participate in the voluntary partner notification program.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—11.16(139A,141A) Definitions. For the purpose of rules 641—11.15(139A,141A) to 641—11.18(141A), the following definitions shall apply:

“Identifiable third party” means a sexual partner of or a person who shares drug injecting equipment with a person who has been diagnosed with HIV infection.

“Partner notification” means services provided to a person who has tested positive for a sexually transmitted disease or infection or to the person’s sexual or needle-sharing partners or social contacts. These services include, but are not limited to, counseling about the nature of the disease, modes of transmission, and risk reduction techniques; treatment or linkage to medical care and treatment; assessment for and referral to social or medical services; elicitation of exposed partners’ names and contact information; testing for other diseases or conditions; and provision of or referral to other prevention services.

“Significant exposure” means “significant exposure” as defined in 641—11.22(139A).
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.17(139A,141A) Partner notification services by the department.

11.17(1) The department shall maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections. In administering the program, the department shall provide for the following:

a. A physician or other health care provider shall encourage a person who tests positive for a sexually transmitted disease or infection to refer for counseling and testing any party with whom the newly diagnosed person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person who tests positive for a sexually transmitted disease or infection may provide to the department any relevant information provided by the tested person regarding any party with whom the tested person has had sexual relations or has shared drug injecting equipment.

11.17(2) When making contact with partners of a person with a sexually transmitted disease or infection, the department shall not disclose the identity of the person who provided the names of the partners and shall protect the confidentiality of the partners who are contacted.

11.17(3) The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for HIV infection to a local health authority unless the authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(4) The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for sexually transmitted diseases other than HIV infection to a local health authority or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(5) In addition to the provisions for partner notification provided under these rules and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code chapter 691 who determines through an investigation that a deceased person was infected with HIV may notify

directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.18(141A) Direct notification of an identifiable third party by a physician, physician assistant or the department.

11.18(1) Direct notification shall be used when an HIV-infected person is having continuing contact with a sexual or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

a. A physician or physician assistant for the HIV-infected person is of the good-faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of drug injecting equipment poses an imminent danger of HIV transmission to the third party.

b. When the physician or physician assistant believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.18(2) The department or a physician or a physician assistant may reveal the identity of an HIV-infected person pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with an HIV-infected person.

11.18(3) When the physician or physician assistant is of the good-faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician or physician assistant in accordance with subrules 11.18(4), 11.18(5) and 11.18(7), or

b. By the department at the request of the physician or physician assistant in accordance with subrules 11.18(6) and 11.18(7).

11.18(4) Notification by the physician or physician assistant. Prior to notification of a third party by an HIV-infected person's physician or physician assistant, the physician or physician assistant shall make reasonable efforts to inform, in writing, the HIV-infected person. The written information shall state that, due to the nature of the person's continuing contact through sexual intercourse or the sharing of drug injecting equipment with the third party and the physician's or physician assistant's belief that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician or physician assistant is forced to take action to provide notification to the third party. The physician or physician assistant, when reasonably possible, shall provide the following information to the HIV-infected person:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the HIV-infected person shall be deemed satisfied when the physician or physician assistant delivers the written notice in person or directs a written notice to the HIV-infected person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.18(5) When performed by the HIV-infected person's physician or physician assistant, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician or physician assistant at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(6) Notification by the department.

a. The physician or physician assistant attending the HIV-infected person shall provide by telephone to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting

equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician or physician assistant. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(7) Confidentiality. The HIV-infected person's physician or physician assistant and the department shall protect the confidentiality of the third party and the HIV-infected person. The identity of the HIV-infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the HIV-infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.18(8) Immunity. A health care provider attending an HIV-infected person has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with the HIV-infected person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of the HIV-infected person.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 6847C, IAB 2/8/23, effective 3/15/23]

Rules 641—11.15(139A,141A) to 641—11.18(141A) are intended to implement Iowa Code sections 139A.33 and 141A.5.

641—11.19 and 11.20 Reserved.

CARE PROVIDERS EXPOSED TO CONTAGIOUS OR INFECTIOUS DISEASES

641—11.21(139A) Purpose. The purpose of these rules is to implement Iowa Code section 139A.19, relating to care providers who are exposed to contagious or infectious diseases.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.22(139A) Definitions. For the purpose of rules 641—11.21(139A) to 641—11.26(139A), the following definitions shall apply:

"*AIDS*" means acquired immune deficiency syndrome as defined by CDC.

"*Blood-borne viral hepatitis*" means hepatitis B or hepatitis C.

"*Care provider*" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in Iowa Code section 147A.1, firefighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in Iowa Code section 613.17.

"*CDC*" means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

"*Certification of a significant exposure report*" means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in this rule.

"*Contagious or infectious disease*" means blood-borne viral hepatitis, meningococcal disease, AIDS or HIV, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the

disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines from CDC.

“Department of corrections” means the Iowa department of corrections.

“Designated representative” means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as a liaison with the facility that received the source patient when the exposure occurred in the field or during patient transport.

“Exposure” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

“HBV” means hepatitis B virus.

“Health care facility” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“Health care provider” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

“HIV” means the human immunodeficiency virus identified as the causative agent of AIDS.

“Home health services” means health care services provided by a care provider in a patient’s home or other residence.

“Infectious bodily fluids” means bodily fluids capable of transmitting HIV as listed in “Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers,” found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent CDC statements on this topic. To prevent HIV and blood-borne viral hepatitis disease transmission, this reference indicates that standard precautions should be followed for exposure to the following infectious bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

“Meningococcal disease” means acute infectious bacterial meningococcal infection presenting as invasive disease characterized by one or more clinical syndromes including bacteremia, sepsis, or meningitis. “Meningococcal disease” does not include nasopharyngeal colonization by *Neisseria meningitidis*.

“Respite care services” means health care services provided by a care provider in a patient’s home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

“Significant exposure” means a situation in which there is a risk of contracting disease through exposure to a patient’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious bodily fluids to which standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures include:

1. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto a mucous membrane (mouth, nose, or eyes) of the care provider.
2. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

“Significant exposure report” means the Report of Exposure to HIV or Other Infectious Disease form provided by the department. This is the only form authorized to be used to document a significant exposure to infectious bodily fluids such that the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

“Tuberculosis” means infectious tuberculosis as defined in 641—1.1(139A).

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.23(139A,141A) Exposures in non-clinical settings.

11.23(1) If a care provider sustains a significant exposure from a patient while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

11.23(2) The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, the source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.23(3) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to the source patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery. The policies and procedures shall include the possibility for the care provider to designate a representative to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the source patient. The designated representative shall inform the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail of those parties who received the notification and, following receipt of this information and upon request of the source patient, the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail shall inform the source patient of the parties to whom notification was provided.

11.23(4) The hospital, clinic, or other health care facility to whom the source patient is delivered shall conduct the test. If the source patient is delivered to an institution administered by the department of corrections, the test shall be conducted by the staff physician of the institution. If the source patient is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the source patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

11.23(5) If a test result is positive, the hospital, clinic, or other health care facility, or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the source patient.

11.23(6) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.23(7) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease. The notification shall not include the name of the source patient unless the patient consents. If the care provider who sustained a significant exposure determines the identity of a source patient who has been diagnosed or confirmed as having a contagious

or infectious disease, the identity of the source patient shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the source patient.

11.23(8) This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

11.23(9) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.23(10) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.9.

11.23(11) The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist a source patient and an exposed care provider in finding resources to pay for the costs of the testing when a care provider was exposed while rendering direct aid without compensation.

11.23(12) A hospital's, clinic's, other health care facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to a patient who was the source of the significant exposure.

11.23(13) Notwithstanding subrule 11.23(12), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient's contagious or infectious disease status to the exposed care provider.

11.23(14) Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to Iowa Code section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under Iowa Code chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.24(139A,141A) Exposures in clinical settings.

11.24(1) If a care provider sustains a significant exposure from a patient while rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

a. If a general consent form was signed and in effect at the time of the significant exposure and the source patient is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in

infectious disease control. No further consent from the source patient is required. However, a source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed. Prior to conducting an HIV-related test, the health care facility or hospital shall provide information to the source patient concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

b. If no consent form was signed or in effect at the time of the exposure, or if the source patient is a minor, the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.24(2) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

11.24(3) The hospital, clinic, or other health care facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient is an adult, the sample and test results shall be identified by name. If the source patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to subrule 11.24(1) because no general consent was signed and in effect at the time of the exposure or because the source patient is a minor, the sample and test results shall be identified only by a number.

11.24(4) If a test result is positive, the hospital, clinic, or other health care facility or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The reports to the department shall include the name of the source patient.

11.24(5) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health care facility or other person performing the test shall notify the legal guardian of the minor.

11.24(6) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease.

11.24(7) This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

11.24(8) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.24(9) The report form “Report of Exposure to HIV or Other Infectious Disease” is a confidential record pursuant to Iowa Code section 141A.9.

11.24(10) The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment.

11.24(11) A hospital’s, clinic’s, other health care facility’s, or health care provider’s duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the patient who was the source of the significant exposure.

11.24(12) Notwithstanding subrule 11.24(11), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient’s contagious or infectious disease status to the exposed care provider.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.25(139A) Immunity. Hospitals, clinics, health care providers, or other persons participating in good faith in complying with provisions authorized or required under these rules are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.26(139A) Duty to test. A hospital, clinic, other health care facility, health care provider, or other person who is authorized to perform a test under these rules has no duty to perform the test authorized.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.21(139A) to 641—11.26(139A) are intended to implement Iowa Code section 139A.19.

641—11.27 to 11.29 Reserved.

HIV-RELATED TEST FOR CONVICTED OR ALLEGED SEXUAL-ASSAULT OFFENDERS AND VICTIMS

641—11.30(915) Purpose. The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for HIV pursuant to Iowa Code chapter 915, and to establish procedures to follow for providing counseling, health care, and support services to the victim.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.31(915) Definitions. For the purpose of rules 641—11.30(915) to 641—11.34(915), the following definitions shall apply:

“*AIDS*” means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Alleged offender*” means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault.

“*Authorized representative*” means an individual who is authorized by the victim to request an HIV-related test of a convicted or alleged offender and who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.
2. The physician of the victim.
3. The victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results.
4. The victim’s spouse.
5. The victim’s legal counsel.

“*Convicted offender*” means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

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

“*Department of corrections*” means the Iowa department of corrections.

“*Division*” means the crime victim assistance division of the office of the attorney general.

“*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

“*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

“*Petitioner*” means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

“*Sexual assault*” means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

“*Significant exposure*” means contact of the victim’s ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration, of the convicted or alleged offender. “Significant exposure” is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

“*Victim*” means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. “Victim” includes an alleged victim.

“*Victim counselor*” means a person who is engaged by a crime victim center as defined in Iowa Code section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.32(915) HIV-related test—convicted or alleged sexual assault offender.

11.32(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim’s interest in all proceedings under Iowa Code chapter 915.

11.32(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.31(915).

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

11.32(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.31(915) and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.32(4) Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the nature, reliability and significance of the HIV-related test and of any test results of the convicted or alleged offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.32(5) A hearing under this rule shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

11.32(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.32(7) A convicted or alleged offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.33(915) Medical examination costs. The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code chapter 915. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.34(915) Testing, reporting, and counseling—penalties.

11.34(1) The physician or other practitioner who orders the testing for HIV of a convicted or alleged offender under Iowa Code chapter 915 shall disclose the results of the test to the convicted or alleged offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner.

11.34(2) Prior to ordering an HIV-related test on a convicted or alleged offender, the physician or practitioner shall provide information to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code section 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

11.34(3) At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage an HIV-infected person to participate in the voluntary partner notification program pursuant to rule 641—11.17(139A,141A).

b. The physician or other practitioner may provide to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment.

11.34(4) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.30(915) to 641—11.34(915).

11.34(5) Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim; the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915). Results of a test performed under these rules shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

11.34(6) If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner; the physician of the victim if requested by the victim; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915).

11.34(7) The court shall not consider the disclosure of an alleged offender's serologic status to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.34(8) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.34(9) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.34(10) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.30(915) to 641—11.34(915), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.30(915) to 641—11.34(915), and the rights to a prediscovery hearing and to appeal provided under Iowa Code chapter 915 shall apply.

11.34(11) HIV-related testing required under 641—11.30(915) to 641—11.34(915) shall be conducted by the state hygienic laboratory.

11.34(12) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.30(915) to 641—11.34(915).

11.34(13) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.34(14) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

11.34(15) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.34(16) A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1,000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the tested subject, and all documentation shall be maintained in a confidential manner.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

Rules 641—11.30(915) to 641—11.34(915) are intended to implement Iowa Code sections 915.40 to 915.43.

641—11.35 to 11.39 Reserved.

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

641—11.40(141A) Definitions. For purposes of rules 641—11.40(141A) to 641—11.49(141A), the following definitions shall apply:

"ADAP advisory committee" means the committee appointed by the bureau of HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding ADAP.

"ADAP formulary" means the list of drugs approved for use in ADAP by the bureau upon recommendation of the ADAP advisory committee.

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“AIDS drug assistance program” or *“ADAP”* means the Iowa AIDS drug assistance program administered by the bureau of HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

“Bureau” means the bureau of HIV, STD, and hepatitis within the department.

“Deductible” means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Health insurance assistance program” means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

“HIV” means the human immunodeficiency virus identified as the causative agent of AIDS.

“Household” means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

“Medication assistance program” means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

“Payer of last resort” means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.41(141A) Purpose. The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient. [ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.42(141A) Ensuring payer of last resort. To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client information for persons enrolled in Medicaid. [ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.43(141A) Eligibility requirements.

11.43(1) An applicant is eligible to participate in the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP, or has insurance that is determined by the department to be incompatible with or cost-ineffective for the ADAP insurance assistance program;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual income that is less than or equal to 500 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household;
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

11.43(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

- a.* Applies for enrollment in ADAP on a form provided by the department;
- b.* Has creditable health insurance coverage or meets the enrollment qualifications for an ADAP-sponsored health plan;
- c.* Is currently being prescribed a drug on the ADAP formulary;
- d.* Has an annual income that is less than or equal to 500 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household;
- e.* Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f.* Is a resident of Iowa.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17; ARC 6435C, IAB 8/10/22, effective 9/14/22]

641—11.44(141A) Enrollment process.

11.44(1) The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

11.44(2) An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.45(141A) Discontinuation of services.

11.45(1) The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

- a.* The enrolled individual dies;
- b.* The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;
- c.* The enrolled individual's annual income increases to an amount above the respective ADAP component's income guidelines;
- d.* The enrolled individual establishes residency outside the state of Iowa;
- e.* The enrolled individual does not request drugs over a 90-day period; or
- f.* The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

11.45(2) An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

[ARC 1215C, IAB 12/11/13, effective 1/15/14; ARC 2934C, IAB 2/1/17, effective 3/8/17]

641—11.46(141A) Distribution requirements.

11.46(1) Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

- a.* Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections, or opportunistic infections; and
- b.* Are on the ADAP formulary.

11.46(2) The primary care provider shall write each drug prescription for an applicant or enrolled individual.

11.46(3) The enrolled individual must obtain the approved drug from the department's contracted pharmacy unless an exception to this requirement is granted by the department.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.47(141A) ADAP waiting list.

11.47(1) If an applicant is eligible for ADAP and sufficient funds are available to provide services to the applicant, the department shall enroll the applicant. If the applicant is eligible for ADAP and sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list in the order provided for in this rule.

11.47(2) The department shall place names on the waiting list in chronological order based upon the date of receipt of a completed application by the department.

11.47(3) To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms semiannually.

11.47(4) The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.48(141A) Appeals. The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the ADAP waiting list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the ADAP advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to ADAP Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the ADAP advisory committee shall review the case and issue a written determination within 15 days of receipt of the request. The decision shall refer to the applicant by initials or other nonidentifying means. The ADAP advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.49(141A) Confidentiality. The ADAP application and all information received or maintained by the department in connection with ADAP shall be considered confidential information in accordance with Iowa Code section 141A.9.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.40(141A) to 641—11.49(141A) are intended to implement Iowa Code section 141A.3.

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CHAPTER 43
MINIMUM REQUIREMENTS FOR RADON TESTING AND ANALYSIS

641—43.1(136B) Purpose and scope. This chapter establishes requirements for the certification of radon measurement specialists and radon measurement laboratories. All persons performing measurements for radon or radon progeny in buildings, other than those which they own or occupy, and who provide the results of these measurements to the owner or occupant of these structures must be certified in accordance with the provisions of this chapter.

641—43.2(136B) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

“*AARST*” means the American Association of Radon Scientists and Technologists.

“*Act*” means the Iowa Radon Testing Act (Iowa Code chapter 136B).

“*ANSI*” means the American National Standards Institute.

“*Building*” means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, and designed for the housing, shelter, enclosure and support of individuals.

“*Certified person*” means a certified radon measurement specialist or certified radon measurement laboratory as defined by this chapter.

“*Certified radon measurement laboratory (certified laboratory)*” means a commercial laboratory which may analyze samples or test for radon decay products and meets the provisions for certification in this chapter.

“*Certified radon measurement specialist (certified specialist)*” means an individual who performs radon or radon progeny measurements in buildings and provides professional or expert advice on radon and radon progeny measurements, radon entry routes, and other radon-related activities; is knowledgeable in the health risk associated from exposure to radon; and who meets the provisions for certification in this chapter.

“*Compensation*” means any form of monetary gain which in any way directly or indirectly results from a radon or radon progeny measurement being conducted.

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

“*EPA*” means the United States Environmental Protection Agency.

“*Laboratory*” means any person performing analysis, not at a testing site, on a passive device to measure radon or radon progeny (charcoal canister, alpha-track, electret, etc.).

“*NRPP*” means the National Radon Proficiency Program facilitated by the American Association of Radon Scientists and Technologists (AARST).

“*NRSB*” means the National Radon Safety Board.

“*Person*” means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, any other state or political subdivision or agency, and a legal successor, representative, agency or agencies of the entities listed in this paragraph.

“*Picocurie per liter*” means a quantity of radioactive material per liter of air that will produce 2.2 disintegrations per minute of radiation. It may be used as a measure of the concentration of radon gas in air. One curie is equivalent to one trillion picocuries.

“*Radon*” means the radioactive noble gas radon-222.

“*Radon progeny*” means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214, and polonium-214.

“*Working level (WL)*” means the concentration of radon progeny that will result in 130,000 million electron volts of alphas particle energy released per liter of air. Working level is a measure of radon decay product concentration in air.

[ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.3(136B) General provisions.

43.3(1) Except as provided in this chapter, no person may test for the presence of radon or radon progeny in the state of Iowa unless the person has been certified by the department of public health.

This requirement also applies to persons whose place of business is located in Iowa, or in a state other than Iowa, and who offer radon testing to residents of Iowa either directly, through the mail, or by other means.

43.3(2) Individual qualifications for radon measurement specialist. No individual may be certified as a radon measurement specialist unless all of the following conditions are met:

- a. Be at least 18 years of age at the time of application;
- b. Possess two years of relevant professional work experience. Relevant postsecondary education may be substituted for professional work experience. Relevant postsecondary education includes a college curriculum in architecture, engineering, building construction or the physical sciences. Relevant professional work experience includes house testing/evaluation for the presence of radon, design and installation of heating, ventilation and air-conditioning systems, design or construction of buildings, or related activities approved by the department of public health;
- c. Use detection devices approved by the NRPP, the NRSB, or another department-approved national radon proficiency program to measure radon. The detection device must be obtained from an Iowa-certified radon measurement laboratory. The records of calibration must be maintained for review by the department or agents of the department.

43.3(3) Requirements for continued certification shall include the following:

- a. A certified person located within the state of Iowa shall allow the department, its agents, employees, and contractors, upon presentation of appropriate credentials, to have access without undue delay to the person's facilities, offices and files for inspection and examination of records and equipment. The certified person shall also allow the department, its agents, employees, and contractors to accompany the person while performing any radon measurement, for the purpose of inspection of those activities, with the approval of the property owner or resident on whose property the activities are being performed.

b. The certified person shall remain in compliance with the Act and this chapter.

- c. The certified person shall comply with all EPA, ANSI/AARST and department-approved radon measurement and quality assurance/quality control (QA/QC) guidelines, protocols, and standards and shall conduct measurements following the standard as of March 15, 2023, applicable to the building being tested. The standards include the following:

(1) ANSI/AARST MS-QA-2019, *Radon Measurement Systems Quality Assurance*.

(2) ANSI/AARST MAH-2019, *Protocol for Conducting Measurements of Radon and Radon Decay Products in Homes*.

(3) ANSI/AARST MALB-2014 with 1/2021 Revisions, *Protocol for Conducting Measurements of Radon and Radon Decay Products in Schools and Large Buildings*.

(4) ANSI/AARST MAMF-2017 with 1/2021 Revisions, *Protocol for Conducting Measurements of Radon and Radon Decay Products in Multifamily Buildings*.

[ARC 2838C, IAB 12/7/16, effective 1/11/17; ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.4(136B) Application for certification.

43.4(1) An application for certification or renewal of certification as a radon measurement specialist or a radon measurement laboratory shall be filed on a form or other electronic document as prescribed by the department and shall contain complete and accurate information.

a. An application for a radon measurement specialist must include:

(1) Proof of successful completion of a department-approved training course on radon/radon progeny measurements. A certificate of attendance is required.

(2) Proof of successful completion of an examination approved by this department. A letter from the NRPP or NRSB showing a passing score for the radon measurement specialist examination fulfills this requirement.

(3) Proof of two years of postsecondary education in architecture, natural science, engineering, or a related discipline. A college transcript must be included to fulfill this requirement or a detailed resume evidencing two years of relevant professional work experience, such as conducting professional home inspections; or the design and installation of heating, ventilation and air-conditioning systems; or the

design or construction of buildings; or related activities approved by the department; or a combination of professional work experience and postsecondary education.

(4) A QA/QC plan for all measurement devices and equipment. If laboratory devices are used, the names and addresses of the Iowa-certified radon measurement laboratories must be included. If a continuous radon monitor is used, the name of the manufacturer, model, and picture of the monitor must be included. The manufacturer of any device used must have NRPP, NRSB or other national agency approval that indicates the device has been approved for measuring radon. Only measurement devices from Iowa-certified radon measurement laboratories or a continuous radon monitor that has been satisfactorily calibrated and approved by the Iowa radon program are allowed for use in performing radon measurements.

(5) Standard operating procedures (SOPs). Procedures must include information concerning the placement and pickup of devices used, who performs the tests, and what measures will be used to ensure all tests are in conformance with EPA protocols and procedures.

(6) A signed statement that the individual will follow all EPA radon measurement guidelines, ANSI/AARST radon measurement standards, and department radon measurement guidelines, standards and protocols.

(7) A signed statement that the individual will submit radon test results every 30 days to the Iowa radon program within the department. The radon test results shall be submitted in a manner that is approved by the department.

(8) A signed statement that the individual will keep all records for a minimum of five years after the radon test is completed.

(9) A copy of the confidentiality waiver that reports results to the customer as outlined in Iowa Code section 136B.2.

(10) A signed statement that the individual will submit to the department within 14 working days any changes in the original application and that the individual will acquire at least eight hours of continuing education credits every two years before certification is renewed.

(11) The fee specified in 43.4(6).

b. An application for a radon measurement laboratory must include:

(1) Proof of meeting the requirements of the NRPP or NRSB Radon/Radon Progeny Measurement Proficiency Program.

(2) A quality assurance plan and quality control procedures for all measurements and equipment.

(3) A signed statement that all EPA, ANSI/AARST, NRPP and NRSB and any department measurement guidelines, standards and protocols will be followed, as applicable.

(4) Name(s) and address(es) of any retail operation(s) selling the laboratory's testing service(s) within Iowa.

(5) A signed statement that all changes in the original application will be submitted to the department within 14 working days.

(6) The fee specified in subrule 43.4(6).

43.4(2) The department may require the applicant to submit supplementary statements containing additional information to enable the department to determine whether an application should be approved or denied, or whether a previously issued certification should be amended, suspended, or revoked.

43.4(3) Each application or supplementary statement shall be signed by either the applicant personally, or a person authorized in writing by the applicant to do so on the applicant's behalf.

43.4(4) A certification will be valid for one year following the date of issuance. No radon measurement covered by this chapter can be conducted after the expiration of the term of certification unless an application for renewal certification has been received by the department 30 days prior to the expiration date of certification and is pending approval. If the application is rejected, no radon test or measurement may be conducted by that applicant in the state of Iowa if a financial arrangement is involved.

43.4(5) Renewal of an annual certification must contain all the information requested in the Notice of Renewal for certification along with the fee specified in subrule 43.4(6). The application to renew credentials must also include a signed and dated continuing education form and a copy of a course

certificate which indicates the name of the individual receiving continuing education, the amount of continuing education the individual has received, and the date the continuing education course was given.

43.4(6) Radon certification fees. Any person wishing to become certified as a radon measurement specialist or as a radon measurement laboratory is required to pay fees sufficient to defray the cost of administering this chapter. Fees which must be submitted are as follows:

a. Application fee.

(1) Each person with Iowa residency wishing certification under the provisions of 641—43.1(136B) shall pay a nonrefundable \$25 application fee.

(2) Each person without Iowa residency wishing certification under 641—43.1(136B) shall pay a nonrefundable \$100 application fee.

b. Annual certification fee.

(1) Each individual requesting certification and renewing certification as a radon measurement specialist must pay a nonrefundable annual fee of \$250.

(2) Each person requesting certification and renewing certification as a radon measurement laboratory must pay a nonrefundable annual fee of \$500.

c. Each person wishing to give reciprocal recognition of credentials from another jurisdiction must pay the appropriate fees in 43.4(6).

d. Returned check and late fees. Persons who fail to pay required fees to the department are subject to the following penalty(ies):

(1) \$15 for each insufficient funds check submitted for payment of radon testing fees.

(2) \$25 per month for failure to pay annual radon testing certification fees starting after the annual renewal date or date of expiration.

e. If payment is not received and the certification has been expired 30 days, certification shall become inactive. In order to reinstate certification after 30 days past the expiration date, the person must reapply and pay the appropriate fees as outlined in this subrule.

[ARC 2838C, IAB 12/7/16, effective 1/11/17; ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.5(136B) Enforcement actions.

43.5(1) Rescinded IAB 12/7/16, effective 1/11/17.

43.5(2) The department may deny, suspend, revoke, modify the certification of a person, place on probation, impose a civil penalty, or refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B, or any combination thereof, when it finds that a certified person or a person who is not certified has committed any of the following:

a. Failing to submit required information or notifications in a timely manner;

b. Failing to maintain the required records;

c. Falsifying approval records, qualifications, or other information or documentation related to certification approval;

d. Failing to comply with the training standards and requirements in 43.3(2);

e. Submitting in the application for approval or reapproval false or misleading statements which the department relied upon in approving the application;

f. Failing to comply with federal, state, or local statutes and regulations, including the requirements of this chapter;

g. Knowingly making misleading, deceptive, untrue, or fraudulent representations involving radon, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established;

h. Using untruthful or improbable statements in advertisements. Use of these statements includes, but is not limited to, the presentation of information to the public by training programs that is false, deceptive, or misleading, or that is promoted through fraud or misrepresentation;

i. Falsifying reports and records required by this chapter;

j. Accepting any fee by fraud or misrepresentation;

k. Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report

such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board;

l. Failing to comply with the terms of a department order or the terms of a settlement agreement or consent order;

m. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed;

n. Failing to respond within 30 days of receipt of communication from the department that was sent by registered or certified mail;

o. Engaging in any conduct that subverts or attempts to subvert a department investigation;

p. Failing to comply with a subpoena issued by the department or failing to cooperate with a department investigation;

q. Failing to pay costs assessed in any disciplinary action;

r. Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;

s. Being discontinued or removed from the NRPP or NRSB Radon/Radon Progeny Measurement Proficiency Program; or

t. Failing to submit radon test data as required in 641—43.6(136B).

[ARC 2838C, IAB 12/7/16, effective 1/11/17; ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.6(136B) Reporting requirements.

43.6(1) A certified person must submit to the department within 30 days after any radon/radon progeny testing, or at the request of the department prior to testing, the address or location of the building, the name and telephone number of the owner(s) of the building where the radon testing will be conducted and the results of any tests performed.

43.6(2) The results for each test conducted shall include, but not necessarily be limited to:

a. The method used for radon or radon decay product testing, media tested, and conditions under which the testing was or will be performed.

b. The level or floor of building where the test(s) was or will be conducted.

c. The results of the test(s) in picocuries/liter (pCi/l) of radon gas or working level (WL) of radon decay products.

d. The date on which the test was or will be conducted.

e. The purpose of the test.

43.6(3) Rescinded IAB 5/29/91, effective 5/10/91.

43.6(4) A certified person shall:

a. Cooperate with the department when conducting field evaluations.

b. Notify the department within 14 days of any changes in testing results or procedures.

c. Not disclose to any other person, except to the department, the results of a test or the address or the name of the owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. However, a person certified or credentialed pursuant to Iowa Code section 136B.1 may disclose the results of a test performed by the person for the presence of radon and radon progeny to a potential buyer of a nonpublic building when an offer to purchase has been presented by the buyer and if the potential buyer paid for the testing. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.

[ARC 2838C, IAB 12/7/16, effective 1/11/17]

641—43.7(136B) Training and continuing education programs. Each person conducting radon-related activities shall complete a radon measurement training program approved by the department. All certified individuals must participate in a continuing education program every other year that consists of a minimum of eight hours of department-approved courses or seminars on either radon measurement or mitigation or both.

641—43.8(136B,280) School district employee measurement training.

43.8(1) School district employee requirements. In order for school district employees to perform radon measurements in buildings within their districts, they must complete a radon measurement training course approved by the department and the Iowa department of education. A school district employee who has completed an approved training can only test buildings within the employee's district.

43.8(2) Approved training. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of 641—43.8(136B,280) and been approved by the department and the Iowa department of education and are listed on the department's website. An approved training course shall meet the following requirements:

a. Be based on the measurement requirements as found in the ANSI/AARST standard MALB-2014 with 1/2021 Revisions, *Protocol for Conducting Measurements of Radon and Radon Decay Products in Schools and Large Buildings*.

b. Consist of five to eight instructional hours.

c. Cover at least the following subjects:

(1) Introduction to radon and its health effects.

(2) Guidance for building managers.

(3) Review of the measurement standard including:

1. Purpose and scope of testing.

2. Preparing a testing plan.

3. Test locations.

4. Testing procedures and options.

5. Quality control.

6. Conditions required before and during testing.

7. Documentation, test reports and record keeping.

8. Actions based on test results.

d. Conclude with a quiz to review the learned materials. The course attendee must pass the quiz with a score of 70 percent or better to receive the attendee's completion certificate.

43.8(3) Certificate of completion. The training provider shall provide that a certificate of completion will be issued and that it will contain at minimum the name of the student, the name of the course and the course ID, the name of the course provider, the course date(s), the number of hours, and the signature and typed name of the training provider.

43.8(4) Application for approval of a training course for school district employees. A person or organization that plans to conduct or sponsor a training course shall apply to the department for approval of the course on a form or in a manner approved by the department. The application shall include:

a. The sponsoring organization's name and website URL (if any), contact person, mailing address, email address and telephone number.

b. The name of the course.

c. The type of course: webinar, online or in-person.

d. The course agenda or course outline, including the approximate time allotted to each training segment.

e. A copy of the training materials provided to the student (manual, notes, templates, etc.).

f. A list of reference materials, texts and audiovisual materials used in the course.

g. A copy of the quiz for the course, containing at least 20 questions.

[ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.9(136B) Exemptions. Certification requirements shall not apply to:

1. Those persons who test for radon/radon decay products in buildings that they own or who perform radon tests for no compensation.

2. State officials who are conducting radon testing as part of the state's radon testing program or local officials who are acting on behalf of the state or administering a local program, and approved by the department.

3. Officials who are conducting radon testing as part of government programs in the United States or contractors working for the United States government.

[ARC 2838C, IAB 12/7/16, effective 1/11/17; ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.10(136B) Enforcement.

43.10(1) A certified individual who measures for radon or radon progeny in the state of Iowa must meet the requirements of this chapter.

43.10(2) Any laboratory providing analysis services for radon detectors used in Iowa must meet the provisions of this chapter.

43.10(3) Any certified individual is prohibited from using radon measurement devices in Iowa obtained from a laboratory which is not certified under the provisions of this chapter.

[ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.11(136B) Penalties. It is unlawful for an individual to function as a radon measurement specialist or radon measurement laboratory in violation of the provisions of the Iowa radon testing Act or of any rule adopted pursuant to the Act. In addition to other sanctions provided in this chapter, persons convicted of violating the provisions of the Act or the rules adopted pursuant to the Act shall be guilty of a serious misdemeanor (Iowa Code section 136B.5).

[ARC 2838C, IAB 12/7/16, effective 1/11/17; ARC 6848C, IAB 2/8/23, effective 3/15/23]

641—43.12(136B) Persons exempted from certification. Persons providing radon or radon progeny measurement devices to the public, but not conducting physical tests for the presence of radon or radon progeny with the measurement devices may do so under the following conditions:

1. They must provide measurement devices obtained from a laboratory certified in Iowa.
2. A valid visible expiration date must be permanently affixed to each measurement device.
3. In addition to the required laboratory instructions regarding measurement procedures, each measurement device must be accompanied by clear directions on where to obtain additional information and interpretation for test results. The certified laboratory or a certified specialist must be included as one of the sources of information and interpretation.

[ARC 6848C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapters 136B and 280.

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CHAPTER 91
IOWA DOMESTIC ABUSE DEATH REVIEW TEAM

641—91.1(135) Purpose. The purpose of the domestic abuse death review team is to aid in the reduction of the incidence of domestic abuse deaths by accurately identifying the cause and manner of deaths occurring from domestic violence and by making recommendations for changes in policy and practice to improve community interventions for preventing domestic abuse deaths.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.2(135) Definitions.

“*Team*” means the Iowa domestic abuse death review team.

“*Unexcused absence*” means failure by a team member to notify the chairperson of an anticipated absence from a team meeting.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.3(135) Agency. The Iowa domestic abuse death review team is established as an independent agency of state government. The Iowa department of public health shall provide staffing and administrative support to the team.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.4(135) Membership. The membership of the team is subject to the provisions of Iowa Code sections 69.16 and 69.16A, relating to political affiliation and gender balance. Team members who are not designated by another appointing authority shall be appointed by the director of public health, in consultation with the attorney general. At least one member shall also be a member of the Iowa child death review team. Membership terms shall be for three years. One-third of the initial members shall serve for three years, one-third of the initial members shall serve for two years, and one-third of the initial members shall serve for one year, as designated by the appointing authority.

91.4(1) The team shall include the following:

- a. The state medical examiner or the state medical examiner’s designee.
- b. A licensed physician, physician assistant or nurse who is knowledgeable concerning domestic abuse injuries and deaths, including suicides.
- c. A licensed mental health professional who is knowledgeable concerning domestic abuse.
- d. A representative or designee of the Iowa coalition against domestic violence.
- e. A certified or licensed professional who is knowledgeable concerning substance abuse.
- f. A law enforcement official who is knowledgeable about domestic abuse and is a member of a state law enforcement association.
- g. A law enforcement investigator experienced in domestic abuse investigation.
- h. A prosecuting attorney experienced in prosecuting domestic abuse cases.
- i. A member of the judiciary appointed by the chief justice of the supreme court.
- j. A clerk of the district court appointed by the chief justice of the supreme court.
- k. A department of correctional services’ employee or subcontractor who is assigned batterers’ treatment program responsibilities and is knowledgeable about risk level assessment.
- l. An attorney licensed in this state who provides criminal defense assistance or child custody representation and who is experienced in dissolution of marriage proceedings.
- m. Both a female and a male victim of domestic abuse.
- n. A family member of a decedent whose death resulted from domestic abuse.

91.4(2) Vacancies shall be filled in the same manner in which the original appointments were made. An appointee shall complete the original member’s term.

91.4(3) Three consecutive unexcused absences shall be grounds for the director to consider dismissal of the team member and the appointment of another. The chairperson of the team is charged with providing notification of absences.

91.4(4) The department may temporarily appoint other members to serve as experts, as needed, on a case-by-case basis.

91.4(5) Members of the team who are currently practicing attorneys or current employees of the judicial branch shall not participate in the following:

a. A case review involving a case in which the team member is presently involved by professional capacity.

b. Development of protocols for domestic abuse death investigations and team review.

c. Development of regulatory changes related to domestic abuse deaths.

[ARC 9110B, IAB 10/6/10, effective 11/10/10; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—91.5(135) Officers. Officers of the team shall be a chairperson and a vice chairperson and shall be elected at the first meeting of each fiscal year unless designated at the time of appointment. Vacancy in the office of chairperson shall be filled by elevation of the vice chairperson. Vacancy in the office of vice chairperson shall be filled by election at the next meeting after the vacancy occurs. The chairperson shall preside at all meetings of the team, appoint such subcommittees as deemed necessary, and designate the chairperson of each subcommittee. If the chairperson is absent or unable to act, the vice chairperson shall perform the duties of the chairperson. When so acting, the vice chairperson shall have all the powers of and be subject to all restrictions upon the chairperson. The vice chairperson shall also perform such other duties as may be assigned by the chairperson.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.6(135) Meetings. The team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by the team. Robert's Rules of Order shall govern all meetings.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.7(135) Expenses of team members. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.8(135) Team duties and responsibilities.

91.8(1) The team shall perform the following duties:

a. Prepare a biennial report to the governor, supreme court, attorney general, and the general assembly concerning the following subjects:

(1) The causes and manner of domestic abuse deaths, including an analysis of factual information obtained through review of domestic abuse death certificates and domestic abuse death data, including patient records and other pertinent confidential and public information concerning domestic abuse deaths.

(2) The contributing factors of domestic abuse deaths.

(3) Recommendations regarding the prevention of future domestic abuse deaths, including actions to be taken by communities, based on an analysis of the contributing factors.

b. Advise and consult the agencies represented on the team and other state agencies regarding program and regulatory changes that may prevent domestic abuse deaths.

c. Develop protocols for domestic abuse death investigations and team review.

91.8(2) In performing duties pursuant to subrule 91.8(1), the review team shall:

a. Review information concerning the relationship between the decedent victim and the alleged or convicted perpetrator from the point when the abuse began until the death occurred in order to identify any correlation between events in the relationship and the escalation of the abuse.

b. Review documents such as orders of protection, dissolution, custody, and support or related court records.

c. Determine whether patterns regarding these events can be established in relation to domestic abuse deaths in general, and consider such conclusions in making recommendations for the biennial report.

91.8(3) The team may establish committees or panels to which the team may assign some or all of the team's responsibilities set out in this rule.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.9(135) Liaisons. The following individuals shall each designate a liaison to assist the team in fulfilling its responsibilities:

1. Director of public health.
2. Director of human services.
3. Commissioner of public safety.
4. Director of corrections.
5. Attorney general.
6. Director of education.
7. State court administrator.
8. Director of the law enforcement academy.
9. Director of human rights.
10. Administrator of the bureau of vital records of the department of public health.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.10(135) Confidentiality and disclosure of information. The team and liaisons shall maintain the confidentiality of all information and records used in the review and analysis of domestic abuse deaths, including disclosure of information which is confidential under Iowa Code chapter 22 or any other provisions of state law.

91.10(1) No information on individual deaths contained in the records described in this rule shall be disclosed except for the purposes of the team, committee or subcommittee meeting, and no confidential information received in preparation for or during the course of such meeting shall be removed from the meeting room except for further review as authorized by the team chairperson.

91.10(2) In preparation for review of an individual death by the team or its authorized committee or subcommittee, the chairperson of the team or the chairperson's designee is authorized to gather all information pertinent to the review. This information may include, but is not limited to:

- a. Hospital records;
- b. Physician's records;
- c. School and child care records;
- d. Autopsy records;
- e. Child abuse registry, investigation or assessment records;
- f. State public assistance records;
- g. Traffic and public safety records;
- h. Law enforcement records;
- i. Fire marshal's records;
- j. Birth and death records; and
- k. Other relevant records necessary to conduct a complete review.

91.10(3) A person in possession or control of medical, investigative or other information pertaining to a domestic abuse death and related incidents and events preceding the domestic abuse death shall allow the inspection and reproduction of the information by the department upon the request of the department to be used only in the administration and for the duties of the Iowa domestic abuse death review team.

91.10(4) Information and records which are confidential under Iowa Code section 22.7 and Iowa Code chapter 235A, and information or records received from the confidential records, remain confidential under this rule.

91.10(5) A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this rule.

91.10(6) A person who releases or discloses confidential data, records, or any other type of information in violation of this rule is guilty of a serious misdemeanor.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

641—91.11(135) Immunity and liability.

91.11(1) Review team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review team member or agent

provided that the review team members or agents acted in good faith and without malice in carrying out their official duties in their official capacity.

91.11(2) A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review team members involving the performance of their duties and powers.

[ARC 9110B, IAB 10/6/10, effective 11/10/10]

These rules are intended to implement Iowa Code sections 135.108 to 135.112.

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CHAPTER 95
VITAL RECORDS: GENERAL ADMINISTRATION
[Prior to 12/12/12, see [641] Ch 96, 98.1, Chs 103, 104]

641—95.1(144) Definitions. For the purpose of 641—Chapters 95 to 100, the following definitions shall apply:

“Administrative costs” means costs for the registration, collection, preservation, modification and certification of records, including but not limited to costs related to copying, regular mailing, searching, staffing, and maintenance of systems.

“Advanced registered nurse practitioner” or *“ARNP”* means an individual licensed pursuant to Iowa Code chapter 152.

“Age of majority” means the chronological moment when a child legally assumes majority control over the child’s own person and actions and decisions, thereby terminating the legal control and legal responsibilities of the child’s parents over and for the child. The period of minority extends to the age of 18 years, but every minor attains majority by marriage.

“Amendment” means a change made by the state registrar upon request from an entitled person as described in 641—95.8(144) to an obvious error, omission, or transposition of letters in a word of common knowledge one year or more after the event.

“Birth center” means a facility or institution, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur following a normal, uncomplicated, low-risk pregnancy.

“Birthing institution” means a private or public hospital licensed pursuant to Iowa Code chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services.

“Burial-transit permit” means a permit which is required to assume custody of a dead body or fetus pursuant to Iowa Code section 144.32.

“Certificate” means the written or electronic legal document containing the facts of an event; also used interchangeably with the term “record.”

“Certificate of birth resulting in stillbirth,” pursuant to Iowa Code section 144.31A, means a noncertified copy issued based upon a properly filed fetal death certificate to record the birth of a stillborn fetus.

“Certified copy” means an official copy of a registered vital record that is authenticated by the state registrar or county registrar. A certified copy contains a statement certifying the facts are true and accurate as recorded, is printed on security paper, and has authentication seals and signatures. A certified copy excludes all entries indicated as confidential or for statistical information.

“Commemorative certificate,” pursuant to Iowa Code section 144.45A, means a commemorative abstract of an Iowa birth or marriage record that has been properly filed.

“Competent and disinterested person” means an individual of legal age who is acquainted with both applicants who plan to marry.

“Confidential information” means data or information that is on a vital record, is not considered public information, and is restricted as to its release pursuant to Iowa Code chapter 144 or other provision of federal or state law.

“Correction” means a change made by the state registrar upon observation, upon query, or upon request from an entitled person as described in 641—95.8(144) to an obvious error, omission, or transposition of letters in a word of common knowledge within one year and prior to the first anniversary of the event.

“County registrar” means the county recorder with the authority to record vital records and issue certified copies. The county registrar operates under the state vital records laws and rules and the guidance of the state registrar pursuant to Iowa Code sections 144.5 and 144.9. Pursuant to Iowa Code section 331.601(4), if the office of the county recorder has been abolished, “county registrar” means the office to which the duties are assigned by the county board of supervisors.

“*County resident copy*” means a properly filed, clearly marked working copy of a decedent’s death certificate which is sent to and recorded by the county registrar of the county of the decedent’s residence in the event the death occurred outside the county of the decedent’s residence.

“*Court of competent jurisdiction*” means the appropriate court for the type of action. When used to refer to inspection of an original certificate of birth based upon an adoption, “court of competent jurisdiction” means the court in which the adoption was ordered.

“*Cremated remains*” means all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions, and may include the residue of any foreign matter including casket material, bridgework, or eyeglasses that were cremated with the human remains.

“*Cremation*” means the technical process, using heat and flame, that reduces human remains to bone fragments, with the reduction taking place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

“*Custody*” means guardianship or control of vital records, including both physical possession, referred to as physical custody, and legal responsibility, referred to as legal custody, unless one or the other is specified. The state registrar shall not transfer legal custody of vital records to another agency for purposes of granting public access until all the records have been purged of all confidential information.

“*Day*” means calendar day.

“*Dead human body*” means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.

“*Death*” means the condition as defined in Iowa Code section 702.8.

“*Declaration of paternity registry*” means a registry for a putative father to declare paternity pursuant to Iowa Code section 144.12A. The declaration does not constitute an affidavit of paternity filed pursuant to Iowa Code section 252A.3A.

“*Delayed birth record*” means the registration of a live birth event occurring in Iowa one or more years after the date of birth which is clearly marked as delayed and shall show on its face the date of the delayed registration.

“*Delayed death record*” means the registration of a death event occurring in Iowa one or more years after the date of death which is clearly marked as delayed and shall show on its face the date of the delayed registration.

“*Delayed marriage record*” means the registration of a marriage event occurring in Iowa one or more years after the event which is clearly marked as delayed and shall show on its face the date of the delayed registration.

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

“*Disinterment permit*” means a permit which allows the removal of a dead human body or fetus from its original place of burial, entombment or interment for the purpose of autopsy or reburial.

“*Electronic access*” means authority given by the state registrar to a county registrar to access electronic vital records through the electronic statewide vital records system for purposes of retrieving information. The state registrar shall provide guidelines for electronic access and the retrieval of information from the electronic statewide vital records system.

“*Electronic statewide vital records system*” means the combined vital records system for registration of birth records, registration of death records, issuance of certified copies of vital records by the state registrar and county registrar, and fee accounting.

“*Emancipated minor*” means a person younger than 18 years of age who has obtained the age of majority by court order.

“*Fetal death*” means a death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy which is not an induced termination of pregnancy. The death is indicated by the fact that, after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles. In determining a fetal death, heartbeats

shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

“Filing” means the presentation of a certificate, report, or other record of a live birth, death, fetal death, adoption, marriage, dissolution, or annulment for registration pursuant to Iowa Code chapter 144.

“Final disposition” means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.

“Foundling” means a living infant of unknown parentage whose place of birth is where the infant is found and whose date of birth shall be determined by approximation.

“Funeral director” means a person licensed in Iowa to practice mortuary science pursuant to Iowa Code chapter 156.

“Gestational surrogate arrangement” or *“surrogate mother arrangement,”* as defined in Iowa Code section 710.11, means an arrangement whereby a female agrees to be artificially inseminated with the sperm of a donor, to bear a child, and to relinquish all rights regarding that child to the donor or donor couple.

“Health care provider” means an individual licensed under Iowa Code chapter 148, 148C, 148D, or 152 or any individual who provides medical services under the authorization of the licensee.

“Induced termination of pregnancy” means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus as defined in Iowa Code section 144.29A(7) “b.”

“Institution” means a facility as defined in Iowa Code section 144.1(10), including “hospital” as defined in Iowa Code section 135B.1(3) but not including “birth center” as defined in Iowa Code section 135.61(2).

“Institutional health facility” means a hospital as defined in Iowa Code section 135B.1, including a facility providing medical or health services that is open 24 hours per day, seven days per week and that is a hospital emergency room or a health care facility as defined in Iowa Code section 135C.1.

“Jurisdiction” means the state or county to which legal authority for the system of vital statistics has been granted by statute.

“Last name” means surname.

“Lineal consanguinity” means the existence of a line of descent in which one person is descended in a direct lineal relationship to another: as between the registrant and the registrant’s parent, grandparent, great-grandparent, and so upward, in the direct ascending line; or between the registrant and the registrant’s child, grandchild, great-grandchild and so downward in the direct descending line; or any siblings of the registrant.

“Live birth” means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In determining a live birth, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

“Marriage license valid date” means the day on which the marriage license becomes valid and on or after which the parties are authorized to marry. When the marriage license valid date is computed, the date of application shall be excluded. The marriage license shall become valid after the expiration of three calendar days after the date of application, unless earlier validated by a court of competent jurisdiction.

“Medical certification” means a statement which attests that the medical information reported on the certificate of death or fetal death is accurate to the best of the medical certifier’s knowledge.

“Medical certifier” means an Iowa-licensed physician, physician assistant, advanced registered nurse practitioner, or medical examiner who attests that the death event has taken place and who determines the cause and manner of death.

“Medical examiner” means the medical legal officer who makes the determination of the cause of death in nonroutine deaths such as non-natural, sudden, or unattended deaths or other deaths which affect the public interest.

“Modification” means any change made to a record that has been accepted and registered, such as a correction, an amendment, a change after adoption or paternity determination, or any other change.

“Mutual consent voluntary adoption registry” means a registry which authorizes adult adopted children, adult siblings, and the biological parents of adult adoptees to register to obtain identifying birth information.

“Natural cause of death” means a death due to a disease or the aging process and not due to external causes.

“Newborn safe haven registration” means the registration of the birth of a living infant of unknown parentage who has been abandoned or left at some unknown time after birth in a location other than the place of delivery.

“Non-birthing institution” means a private or public hospital licensed pursuant to Iowa Code chapter 135B that does not have a licensed obstetric unit or is not licensed to provide obstetric services but may provide obstetric services on an emergency basis.

“Non-institution birth” means a live birth that occurs outside of an institution and not en route to an institution.

“Non-natural cause of death,” pursuant to Iowa Code section 144.28(1)“a,” means the death is a direct or indirect result of physical, chemical, thermal, or electrical trauma, or drug or alcohol intoxication or other poisoning.

“Notification of record search” means the document issued to the applicant when the record requested cannot be located through a search of registered records. The document contains a certification statement, is printed on security paper, and has authentication seals and signatures.

“Officiant” means (1) a judge of the Iowa supreme court, court of appeals, or district court, including a district associate judge, an associate juvenile judge, or a judicial magistrate, and including a senior judge as defined in Iowa Code section 602.9202(3), or (2) a person ordained or designated as a leader of the person’s religious faith.

“Physician” means an individual licensed pursuant to Iowa Code chapter 148.

“Physician assistant” means an individual licensed pursuant to Iowa Code chapter 148C.

“Presumptive death” means a death event presumed to have occurred in Iowa where no human body is found and a court of competent jurisdiction has determined the death has occurred.

“Putative father” means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the conception or birth of the child or at any time during the period between the conception and birth of the child.

“Record of death” means the compilation of those entries of a death, whether electronic or paper, which are contained in indexed systems which record the death event occurring in Iowa. “Record of death” shall include the certificate of death.

“Record of fetal death” means the compilation of those entries of a fetal death, whether electronic or paper, which are contained in indexed systems which record a fetal death event occurring in Iowa. “Record of fetal death” shall include the certificate of fetal death.

“Record of foreign born adoption” means the compilation of those entries of a live birth event for a child born in a foreign country and adopted by an Iowa resident. “Record of foreign born adoption” shall include the certificate of foreign birth and shall not constitute U.S. citizenship.

“Record of live birth” means the compilation of those entries of a live birth event, whether electronic or paper, which are contained in indexed systems which record a live birth event occurring in Iowa. “Record of live birth” shall include the certificate of live birth.

“Record of marriage” means the compilation of those entries of a marriage event, whether electronic or paper, which are contained in indexed systems which record a marriage event occurring in Iowa. “Record of marriage” shall include the certificate of marriage.

“Registrant” means the person named on the certificate as the person who was born, died, or was married.

“Registration” means the process by which vital statistics records are completed, filed, and incorporated by the state registrar in the official records.

“Report of dissolution or annulment” means the statistical report of dissolution or annulment, whether electronic or paper, excluding all entries indicated as confidential or for statistical information only.

“Report of termination of pregnancy” means the aggregated compilation of the information received by the department on terminations of pregnancies for each information item listed, with the exception of the report tracking number, the health care provider code, and any set of information for which the number is so small that the confidentiality of any person to whom the information relates may be compromised.

“Research” means the systematic investigation designed primarily to develop or contribute to scientific, medical, public health or psychosocial disciplines and generalized knowledge and not for private gain.

“Sealed” means the removal from inspection of any copy of an original certificate in the custody of the county registrar and the state registrar.

“Security paper” means standardized paper for issuing certified copies of vital record events that meets, at a minimum, national requirements for security features embedded within the paper to deter tampering, counterfeiting, photocopying, or imaging in order to help prevent fraudulent use of the certified copy and prevent identity theft.

“Single parent birth” means any record of live birth for which there is a reference or statement on the certificate or entry which directly indicates “no” regarding “born in wedlock” or “married”; or any record of live birth for which there is reference or statement on the certificate or entry that either parent is “unknown” or “anonymous”; or any certificate or entry which reflects the omission or absence of the name of the father of the child.

“Spontaneous termination of pregnancy” means the occurrence of an unintended termination of pregnancy at any time during the period from conception to 20 weeks’ gestation and is not a spontaneous termination of pregnancy at any time during the period from 20 weeks or greater which is reported to the department as a fetal death under Iowa Code section 144.29.

“Standard birth registration” means a vital record of a live birth event that occurred in Iowa which was submitted and accepted for registration within one year of the event.

“State registrar” means the director of the department or the director’s designee.

“Stillbirth” means an unintended fetal death occurring after a gestation period of 20 completed weeks or more or an unintended fetal death of a fetus with a weight of 350 or more grams.

“System of vital statistics” or *“system”* means the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.

“Uncertified copy” means an unofficial copy of a registered vital record which is not printed on security paper and which does not contain any authentication by the issuing jurisdiction. Uncertified copies shall contain an overstamp such as: “Not for Legal Purposes,” “Administrative Use Only,” “Deceased,” “For Genealogical Purposes Only,” “Working Copy,” or any other overstamp as authorized by the state registrar.

“Vital records” means certificates or reports of birth, death, fetal death, marriage, dissolution, annulment, and related data.

“Vital statistics” means data derived from reports, certificates, and records of live birth, death, fetal death, induced termination of pregnancy, marriage, dissolution of marriage or annulment, and data related thereto.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2275C, IAB 12/9/15, effective 1/13/16; ARC 5199C, IAB 10/7/20, effective 11/11/20]

641—95.2(144) Vital records and statistics. There is established a division in the department which shall install, maintain, and operate the system of vital statistics throughout the state. No official system for the registration of births, deaths, fetal deaths, adoptions, marriages, dissolutions, and annulments shall be maintained in the state or any of its political subdivisions other than the one provided for in

Iowa Code chapter 144, including, but not limited to, a system maintained by any agency or private entity.

95.2(1) No person shall prepare or issue any certificate which purports to be an original certified copy or a copy of a certificate of birth, death, fetal death, adoption, marriage, dissolution, or annulment except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

95.2(2) The state registrar and the county registrar shall not maintain or issue copies of any vital record of an event occurring outside the state registrar's or county registrar's jurisdiction except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2933C, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.3(144) Forms—property of department. All forms, certificates and reports pertaining to the registration of vital events are the property of the department and shall be surrendered to the state registrar upon demand. Official designated forms used for the express purpose of creating a vital record event shall not be accessible to the general public unless authorized by rule.

95.3(1) The forms supplied or approved for reporting vital events shall be used for official purposes as provided for by law, rules and instructions of the state registrar.

95.3(2) No forms, except those furnished or approved by the state registrar, shall be used in the reporting of vital events or the making of copies of vital records.

95.3(3) Security paper used to report vital events shall be maintained in a secure location accessible only to the state and county registrars and their employees for administrative purposes.

95.3(4) Security paper shall be used to issue certified copies of Iowa vital records and shall be maintained in a secure location accessible only to the state and county registrars and their employees for administrative purposes.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 4398C, IAB 4/10/19, effective 5/15/19]

641—95.4(144) Information by others.

95.4(1) Any person having knowledge of the facts shall furnish information that the person possesses regarding any birth, death, fetal death, adoption, marriage, dissolution, or annulment, upon demand of the state registrar.

95.4(2) Every person in charge of an institution, or the person's designee, shall maintain a record of personal particulars and data concerning each person admitted or confined to the institution pursuant to Iowa Code section 144.47. This record shall include information required by the standard certificate of birth, death, and fetal death forms issued under the direction of the state registrar. The record shall be made at the time of admission based on the information provided by such person, but when information cannot be obtained from the person, it shall be obtained from the most knowledgeable relative or person acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

95.4(3) Records maintained under this rule shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar upon demand.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.5(144) Handling of vital records.

95.5(1) State equipment and state vital records shall not be handled or accessed except by the state registrar, the state registrar's employees, or other authorized personnel for administrative purposes.

95.5(2) The county registrar shall provide assistance to the public in accessing vital records designated as public records in the custody of the county registrar.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.6(144) Fees.

95.6(1) *Fees for services provided by state registrar or county registrar.* The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

a. The state registrar or county registrar, as applicable, shall charge a fee of \$15 for a certified copy of a vital record. If, following a search, no record is found and no certified copy is printed, the \$15 fee may be retained.

b. The state registrar shall charge a fee of \$15 to prepare an adoption certificate, amend a certificate, amend a certificate of live birth to reflect a legal change of name, prepare a delayed certificate, process other administrative or legal actions, prepare a noncertified copy of an original certificate of birth pursuant to Iowa Code section 144.24A, or prepare copies of supporting documents on file in the state registrar's office. No fee shall be charged for establishment of paternity.

c. The state registrar shall charge a fee of \$25 to file a completed application for the mutual consent voluntary adoption registry.

d. The state registrar shall charge a fee of \$5 to update applicant information maintained in the mutual consent voluntary adoption registry and the declaration of paternity registry.

e. The state registrar shall charge a fee of \$15 to amend an abstract or other legal documentation in support of the preparation of a new certificate.

f. The state registrar shall charge a fee of \$35 to issue a commemorative copy of a certificate of birth or a certificate of marriage pursuant to Iowa Code section 144.45A. Fees collected shall be deposited in the emergency medical services fund established in Iowa Code section 135.25.

g. The state registrar shall charge a fee of \$15 for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to Iowa Code section 144.31A.

h. The state registrar shall charge a fee of \$15 for the purpose of issuing a certificate of nonviable birth pursuant to Iowa Code section 144.31B.

95.6(2) *Overpayments.* Any overpayment of \$5 or less received by the state registrar for the copying of vital records or for the preparation or amending of a certificate shall not be refunded and shall be retained by the department.

95.6(3) *Certified copy of modified vital record.* When an individual is in possession of a previously issued certified copy of a vital record and the original record is subsequently modified, the individual may request and receive a certified copy of the modified record without charge if the certified copy prior to modification is relinquished to the registrar's office that issued the certified copy, unless otherwise directed by the state registrar.

95.6(4) *Search of county registrar's records—fee for uncertified copy.* A person who is requesting an uncertified copy of a vital record in the custody of the county registrar shall conduct the search of the county files to locate the record. If a copy is requested, the county registrar may charge a fee pursuant to Iowa Code section 22.3. The fee shall be retained by the county.

95.6(5) *Distribution of fees.*

a. All fees collected by the county registrar and the state registrar shall be distributed as follows:

(1) For fees collected by a county registrar, with the exception of the fee in subrule 95.6(4), the county registrar shall retain \$4 of each \$15 fee collected by that office. Fees collected shall be divided as follows:

1. For a birth certificate or a marriage certificate, the state registrar shall receive \$8, and \$3 shall be deposited in the general fund of the state, except for the fee collected pursuant to paragraph 95.6(1) "f."

2. For a death certificate, the state registrar shall receive \$6, the office of the state medical examiner shall receive \$3, and \$2 shall be deposited in the general fund of the state.

(2) For fees collected by the state registrar, the state registrar shall retain all fees, with the exception of the fees in paragraph 95.6(1) "a," of which the state registrar shall retain \$9 of each \$15 fee collected for the issuance of certified copies. The \$6 balance of certified copy fees collected by the state registrar shall be divided as follows:

1. For a birth certificate or a marriage certificate, \$6 shall be deposited in the general fund of the state.

2. For a death certificate, the office of the state medical examiner shall receive \$3, and \$3 shall be deposited in the general fund of the state.

b. All fees retained by the state registrar shall be added to the vital records fund established by the department pursuant to Iowa Code section 144.46A.

c. All fees received by the office of the state medical examiner shall be added to the operating budget established for the operation of that office.

95.6(6) *Fee for search to verify vital statistics record.* A fee shall be charged by the state registrar for each search conducted for the purpose of providing verification of vital statistics data to an agency authorized to receive such data under subrule 95.12(2).

a. The amount of the fee shall be determined in an agreement with the department and shall be dependent on the nature and scope of the project and the resources required to obtain the data requested.

b. The state registrar shall retain the full amount of all fees collected under this subrule in the vital records fund established pursuant to Iowa Code section 144.46A.

95.6(7) *Fee for researcher access to vital statistics data.* A fee shall be charged to each researcher who is provided access to vital statistics data in accordance with Iowa Code section 144.44 and the required agreement executed with the department. The amount of the fee shall be based on the nature and scope of the research project and resources required to obtain the data requested.

a. The state registrar shall allocate the fees for copies of birth, marriage, and death certificates provided to researchers pursuant to the distribution of fees set forth in subrule 95.6(5).

b. The state registrar shall retain in the vital records fund established pursuant to Iowa Code section 144.46A the full amount of fees collected from researchers for searching files or records to create a data file.

95.6(8) *Service member who died while on active duty—waiver of fee.* The certified copy fee for a birth certificate or a death certificate of a service member, as defined in Iowa Code section 29A.90, who died while on active duty shall be waived for a period of one year from the date of death. Application for the certified copy shall be made by an entitled family member as described in 641—95.8(144) of the deceased service member or the entitled family member's legal representative. Documentation shall be submitted at the time of application to substantiate the date of death and active duty status.

95.6(9) *Retention of applications and reports.* An application for a certified copy of a vital record in Iowa shall be retained by the county registrar for a minimum of six months from date of issuance of the certified copy. All financial reports for vital records fees shall be retained by the county registrar for a minimum of three calendar years.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 1074C, IAB 10/2/13, effective 1/1/14; see Delay note at end of chapter; ARC 1402C, IAB 4/2/14, effective 5/7/14; ARC 2275C, IAB 12/9/15, effective 1/13/16; ARC 4398C, IAB 4/10/19, effective 5/15/19; ARC 6108C, IAB 12/29/21, effective 2/2/22; ARC 6849C, IAB 2/8/23, effective 3/15/23]

641—95.7(144) General public access of vital records in the custody of the county registrar. A vital record may be in the custody of the county registrar if the event occurred in that county and the record is not excluded by statute or definition for purposes of confidentiality.

95.7(1) There shall be public access and the right to inspect all vital records in the custody of the county registrar after the vital records are purged of confidential information pursuant to rule 641—95.11(144). The county registrar shall allow the general public access to the electronic statewide vital records system to search as a public user as a right under Iowa Code chapter 22 for events which occurred in that county.

95.7(2) Information inspected and copied shall not be used to establish an official system for the registration of vital statistics except as authorized by Iowa Code chapter 144.

95.7(3) County registrars may issue uncertified copies of vital records held in the registrars' physical custody or accessible through the electronic statewide vital records system, except those records excluded by statute. Uncertified copies issued by the county registrar shall be issued on plain white paper and clearly stamped "not for legal purposes." Security paper provided by the state registrar shall not be used to produce uncertified copies.

95.7(4) For records available in the electronic statewide vital records system, the state registrar shall send to the county registrars a list of all records that have been modified. County registrars shall, as directed by the state registrar, remove all forms of any vital record in their physical custody from the county vital records system if the vital record appears on the list of modified records.

95.7(5) For records not available in the electronic statewide vital records system, the state registrar shall send a copy of any modified vital record to the county of event and, if the record is a death record, to the county of residence.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2275C, IAB 12/9/15, effective 1/13/16; ARC 2933C, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.8(144) Direct tangible interest in and entitlement to a vital record. Certified copies of vital records may be issued by the state registrar or county registrar upon written application, payment of the required fee pursuant to paragraph 95.6(1) “a,” and demonstration of a verifiable, direct tangible interest and entitlement.

95.8(1) The following persons shall be considered to have a direct tangible interest and entitlement and are authorized to obtain a certified copy of a vital record:

a. The registrant, if the registrant is of legal age, has reached the age of majority, or is an emancipated minor.

b. A member of the registrant’s immediate legal family, including:

- (1) Current spouse or surviving spouse;
- (2) Children;
- (3) Mother or father if listed on the registrant’s birth certificate;
- (4) Sibling, if sibling has reached the age of majority;
- (5) Maternal grandparents, or paternal grandparents if the father is listed on the birth certificate; or
- (6) Step-parent or step-child if:
 1. Legal parent and step-parent are currently married at the time of application; or
 2. Step-parent is the surviving spouse of the legal parent and not remarried.

c. The documented legal representative of the registrant or the registrant’s immediate legal family, including:

- (1) An attorney;
- (2) A court-appointed guardian;
- (3) A foster parent;
- (4) A funeral director, for up to one year following the decedent’s date of death; or
- (5) A legal executor.

d. Other persons who demonstrate a direct tangible interest and entitlement when it is shown that the certified copy is needed to determine or protect a personal or property interest and the interest is for the benefit of the registrant.

95.8(2) The following persons shall not be deemed to have direct tangible interest and entitlement or be authorized to secure vital records:

a. Biological parents of adopted persons in the absence of a court order from the court of competent jurisdiction;

b. Biological family members of adopted persons;

c. Adopted persons requesting biological family records; or

d. Commercial firms or agencies requesting lists of vital record events, or lists of names, or lists of addresses, or that are not legal representatives requesting records on behalf of entitled individuals.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 4398C, IAB 4/10/19, effective 5/15/19]

641—95.9(144) Search and issuance of a certified copy of a vital record. The search and issuance of a certified copy of a vital record shall be requested from the state registrar or county registrar.

95.9(1) Only entitled applicants as described in rule 641—95.8(144) may submit requests for certified copies of vital records.

95.9(2) A person requesting a search and issuance of a certified copy of a vital record shall provide in writing the following:

- a.* The name of the person or persons whose vital record is to be searched;
- b.* The purpose of such request;
- c.* The relationship to the registrant of the person making the request; and
- d.* The notarized signature and the address of the person making the request.

95.9(3) In addition to a completed written application, the applicant shall provide:

- a.* A current, legible government-issued photo identification of the applicant making the request or other identification documents acceptable to the state registrar; and
- b.* Payment of the required fee before the search is conducted.

95.9(4) The state registrar and county registrar shall have the authority to require additional supporting documents to prove direct tangible interest and entitlement pursuant to rule 641—95.8(144).

95.9(5) If, after the search is conducted, no record is on file and the state registrar or county registrar issues a “notification of record search” on certified paper, the fee for the search may be retained pursuant to paragraph 95.6(1) “*a.*”

95.9(6) If a certified copy of a vital record is issued and sent to the applicant using a mail service and the applicant does not receive the certified copy, the state registrar or the county registrar may replace the certified copy without an additional fee using an Affidavit of Non-Receipt. The applicant must contact the issuing registrar within 90 days of the date of request. A minimum of 30 days must have elapsed from the time the certified copy was mailed. The applicant shall read the instructions, complete the Affidavit of Non-Receipt and have the applicant’s signature notarized. The original Affidavit of Non-Receipt and a photocopy of the applicant’s driver’s license must be reviewed by the issuing registrar before the certified copy can be replaced for no additional fee. The state registrar or county registrar may refuse any Affidavit of Non-Receipt when the state registrar or county registrar determines proof of receipt, fraud or misrepresentation. The state registrar shall give to the registrant a notice in writing of the state registrar’s reason and intention to refuse the Affidavit of Non-Receipt.

95.9(7) If printed from the electronic statewide vital records system by a county registrar, the certified copy of a vital record shall be stamped by the issuing county registrar to reflect the county in which the certified copy was issued.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2275C, IAB 12/9/15, effective 1/13/16]

641—95.10(144) Search and issuance for genealogy or family history. The search and issuance of a vital record for genealogy may be requested from the state registrar or county registrar upon written application and payment of the required fee pursuant to paragraph 95.6(1) “*a.*”

95.10(1) The state registrar or county registrar may issue certified copies of a vital record for genealogy or family history to an applicant who can satisfactorily demonstrate a line of direct lineal consanguinity and to aunts, uncles, and cousins not past twice removed.

95.10(2) All certified copies issued for genealogy or family history shall be clearly marked “for genealogical purposes only.”

95.10(3) No certified copy shall be issued for genealogy or family history if the registrant is known to be living.

95.10(4) If, after the search is conducted, no record is on file, the state registrar or county registrar shall issue a “notification of record search” on certified paper, and the fee for the search shall be retained pursuant to paragraph 95.6(1) “*a.*”

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2933C, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.11(144) Registrars’ responsibility for maintenance of confidentiality.

95.11(1) The state registrar and county registrar shall maintain the confidentiality of the following material, records, and information:

- a.* Entries indicated as confidential or statistical in nature on the face of the record or otherwise confidential by law;
- b.* Any record which is ordered sealed by the state registrar or pursuant to a court order.

95.11(2) The county registrar shall take all necessary steps to ensure that confidential information reflected on vital records has been redacted from general public access. If confidential information is included with accessible information, only accessible information shall be made available to the general public for examination.

95.11(3) The county registrar shall employ at a minimum all of the following methods to ensure confidentiality:

- a. Permanently cover or remove, by appropriate means, confidential information;
- b. Promptly process the notice to seal a record as directed by the state registrar; and
- c. Seal and not reproduce confidential information when copies of vital records are made.

95.11(4) The county registrar may charge reasonable administrative costs to reflect the expenses for efforts required to allow general public access, examination and the assurance of confidentiality of this material and information pursuant to the authority of Iowa Code chapter 22.

- a. The administrative cost is to be paid by persons who request the services provided by the county registrar, including supervising, copying or providing a suitable place for such work.
- b. The county registrar shall retain all administrative costs collected to allow general public access, examination, and the assurance of confidentiality of the vital record and information pursuant to the authority of Iowa Code chapter 22.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2275C, IAB 12/9/15, effective 1/13/16]

641—95.12(144) Disclosure of data.

95.12(1) The state registrar may disclose data from the system of vital statistics to federal, state, county or municipal agencies of government that request such data in the conduct of their official duties, subject to conditions the state registrar may impose to ensure that the use of the data is limited to official purposes.

- a. The aforementioned agencies shall not provide the certified copy or a copy of the vital record, or release information contained therein, to the person named on the certificate, a member of the person's legal family, or the person's legal representative.
- b. Certified copies issued to the aforementioned agencies shall be appropriately stamped, for example, "administrative purposes only" or "for veteran affairs purposes only."

95.12(2) Confidential verifications of the facts contained in vital records may be furnished by the state registrar to any federal, state, county or municipal government agency or other entity in the conduct of the agency's or entity's official duties, subject to conditions the state registrar may impose to ensure that the verification is limited to official purposes. Confidential verification of the facts contained in vital records may be furnished by a county registrar to another county office, within the county jurisdiction, in the conduct of the county's official duties, subject to conditions the state and county registrar may impose to ensure that the verification is limited to official purposes.

a. Such confidential verifications shall be on forms prescribed and furnished by the state registrar or on forms furnished by the requesting agency or entity and acceptable to the state registrar, or the state registrar may authorize the verification in other ways.

b. The aforementioned agencies and entities shall not provide the original or a copy of the verified certificate, or release information contained therein, to the person named on the certificate, a member of the person's legal family, or the person's legal representative.

95.12(3) The state registrar may permit the use of data from vital statistics for research purposes subject to conditions the state registrar may impose to ensure the use of the data is limited to such research purposes. No data shall be furnished from vital statistics for research purposes until the state registrar has prepared in writing the conditions under which the data may be used and has received an agreement signed by a responsible agent of the research organization agreeing to meet and conform to such conditions.

95.12(4) The state registrar may transmit to the county registrar data needed to produce certified copies of vital records pursuant to rule 641—95.8(144).

95.12(5) The state registrar may transmit to the statewide immunization registry information from birth certificates for the sole purpose of identifying those children in need of immunizations. The state registrar may impose conditions to ensure that the use of the information is limited to official purposes.

95.12(6) The state medical examiner or the county medical examiner may request an uncertified copy of a death certificate before the death certificate is accepted and filed at the county registrar's office.

- a. The copy shall be clearly stamped "administrative purposes only."

b. The death certificate shall be for the sole use of the state medical examiner or county medical examiner and shall not be used as a legal document, be distributed, be copied or be maintained other than to be made a part of the investigatory file.

c. If the state medical examiner or any county medical examiner determines the death does not warrant further investigation, the state medical examiner or county medical examiner shall destroy the uncertified copy of the death certificate.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; ARC 2275C, IAB 12/9/15, effective 1/13/16]

641—95.13(144) Preparation of certified copies. Certified copies of vital records may be prepared and issued by the state registrar or the county registrar pursuant to rules 641—95.3(144) and 641—95.9(144).

95.13(1) Certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except for confidential information. Certified copies shall be issued using security paper that is prescribed by the state registrar.

95.13(2) When a certified copy is issued, each certification shall contain a statement certifying that the facts are the true facts recorded in the issuing office, the date issued, the name of the issuing office, the registrar's signature or an authorized copy thereof, and the seal of the issuing office.

95.13(3) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.14(144) Access to original certificate of birth prior to adoption. Notwithstanding any provision of law to the contrary, an adopted person who was born in this state and whose original certificate of birth was substituted with a new certificate of birth pursuant to Iowa Code section 144.24 based upon the adoption, or an entitled person, may apply for and obtain a noncertified copy of the original certificate of birth of the adopted person who is the subject of the original certificate of birth in accordance with this rule, including with any required redaction of personally identifiable information pursuant to Iowa Code section 144.24A(2).

95.14(1) Entitlement.

a. If an adopted person who is the subject of the original certificate of birth is submitting the application, the adopted person shall be at least 18 years of age at the time the application is filed.

b. If an entitled person is submitting the application, the adopted person who is the subject of the original certificate of birth shall be deceased at the time the application is filed.

95.14(2) The adopted person or the entitled person requesting a noncertified copy of the original certificate of birth shall file a written application with the state registrar on a form and in the manner prescribed by the state registrar.

95.14(3) Upon receipt of the written application, proof of identification pursuant to paragraph 95.9(3) "a," and payment of a fee pursuant to paragraph 95.6(1) "b," the state registrar shall issue a noncertified copy of the original certificate of birth to the applicant in accordance with this rule, including with any required redaction of personally identifiable information pursuant to Iowa Code section 144.24A(2). At the time of such issuance, the state registrar shall also provide to the applicant any contact preference form or medical history form completed and submitted to the state registrar including with any required redaction of personally identifiable information pursuant to Iowa Code section 144.24A(2).

a. A biological parent may file a contact preference form prescribed by the state registrar in accordance with the provisions outlined in Iowa Code section 144.24A(2) and state the biological parent's preference for contact by an adopted person or an entitled person following application for and issuance of the noncertified copy of the original certificate of birth under this rule. The contact preference form shall be provided to the biological parent in accordance with Iowa Code section 600A.4. A contact preference form may be completed or updated by the biological parent at any time at the request of the biological parent.

b. A biological parent may file a medical history form prescribed by the state registrar in accordance with the provisions outlined in Iowa Code section 144.24A(3) and provide medical history of the biological parent and any blood relatives. The medical history form shall be provided to the

biological parent in accordance with Iowa Code section 600A.4. A medical history form may be completed or updated by the biological parent at any time at the request of the biological parent.

c. Upon receipt of a completed contact preference form or medical history form, the state registrar shall attach any such completed form to the original certificate of birth.

d. For the purposes of this rule, “entitled person” means the spouse of the adopted person who is deceased or an adult related to the adopted person who is deceased within the second degree of consanguinity.

e. An application may be submitted under this rule by an adopted person or an entitled person to obtain a noncertified copy of an adopted person’s original certificate of birth in accordance with this rule, if the adopted person who is the subject of the original certificate of birth was born before January 1, 1971.

f. Beginning January 1, 2022, an application may be submitted under this rule by an adopted person or an entitled person to obtain a noncertified copy of an adopted person’s original certificate of birth in accordance with this rule, notwithstanding the date of birth of the adopted person who is the subject of the original certificate of birth prescribed under paragraph 95.14(3) “*b.*”

This rule is intended to implement Iowa Code sections 144.24A and 600A.4.
[ARC 6108C, IAB 12/29/21, effective 2/2/22]

641—95.15(144) Certificate of nonviable birth.

95.15(1) As used in this rule:

“*Certificate of nonviable birth*” means a document issued based upon a nonviable birth.

“*Health care provider*” means the same as defined in Iowa Code section 144.29A.

“*Hospital*” means the same as defined in Iowa Code section 135B.1.

“*Nonviable birth*” means an unintentional, spontaneous fetal demise occurring after demonstration of a doppler-detected heartbeat and prior to the twentieth week of gestation during a pregnancy that has been verified by a health care provider.

95.15(2) A health care provider who attends or diagnoses a nonviable birth or a hospital at which a nonviable birth occurs shall advise a patient who experiences a nonviable birth that the patient may request a certificate of nonviable birth as provided in this section and, upon request by the patient, shall provide a letter certifying the nonviable birth to the patient on the form prescribed by the state registrar.

95.15(3) The department shall issue a certificate of nonviable birth to a patient within 60 days of receipt of a request and certification letter. The request shall be made on the form prescribed by the state registrar.

95.15(4) The certificate of nonviable birth shall contain all of the following:

a. The date of the nonviable birth.

b. The name and gender of the baby, if known.

(1) If the name is not furnished by the patient, the department shall complete the certificate with the name “baby boy” or “baby girl” and the last name of the patient.

(2) If the gender is unknown, the department shall complete the certificate with the name “baby” and the last name of the patient.

c. The name of the patient and, if married, the patient’s spouse.

d. The statement: “This certificate is not proof of live birth.”

95.15(5) The fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state and the vital records fund in accordance with Iowa Code section 144.46A.

95.15(6) A certificate of nonviable birth shall not be filed or registered with the department. The department shall not register the nonviable birth associated with a certificate issued under this section or use the nonviable birth in calculating live birth statistics.

95.15(7) A certificate of nonviable birth shall not be used to establish, bring, or support a civil cause of action seeking damages against any person for bodily injury, personal injury, or wrongful death for a nonviable birth.

95.15(8) This section shall only apply to, and a certificate of nonviable birth may be requested and issued for, nonviable births occurring on or after January 1, 2000.

This rule is intended to implement Iowa Code section 144.31B.
[ARC 6849C, IAB 2/8/23, effective 3/15/23]

641—95.16(144) Cancellation of fraudulent records.

95.16(1) When the state registrar determines that a certificate was registered through fraud or misrepresentation, the state registrar shall give to the registrant a notice in writing of the state registrar's intention to cancel said certificate.

95.16(2) The notice of cancellation shall give the registrant an opportunity to appear and show cause why the certificate shall not be canceled.

a. The notice may be served on the registrant, or, in the case of a minor or incompetent person, on the parent or guardian, by the forwarding of the notice by certified mail to the last-known address on file in the office of the state registrar.

b. The certificate shall not be available for certification unless the registrant, parent or guardian within 30 days after the date of mailing the notice shows cause satisfactory to the state registrar why the certificate shall not be canceled.

95.16(3) Upon presentation to the state registrar of a court order stating a marriage certificate was registered through fraud or misrepresentation, the state registrar shall remove said record from the vital statistics system. The state registrar shall order the county registrar to remove any record related to the marriage.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; ARC 6108C, IAB 12/12/12, effective 2/2/22; see Delay note at end of chapter; ARC 6849C, IAB 2/8/23, effective 3/15/23]

641—95.17(144) Unlawful acts.

95.17(1) *Serious misdemeanors.* Any person who reports information required under Iowa Code chapter 144 and who commits any of the following acts is guilty of a serious misdemeanor:

a. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed or in an application for an amendment or willfully and knowingly supplies false information intending that such information be used in the preparation or amendment of any such report, record, or certificate.

b. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed or a certified copy of such report, record, or certificate.

c. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception any certificate, record, or report or certified copy thereof.

d. Willfully and knowingly alters, amends, or mutilates any copy, certified copy, record or report.

e. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued based upon a record which is false in whole or in part or which relates to the birth of another person.

f. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whose birth the record relates.

g. Disinterring a body in violation of Iowa Code section 144.34.

h. Knowingly violates a provision of Iowa Code section 144.29A.

95.17(2) *Simple misdemeanors.* Any person committing any of the following acts is guilty of a simple misdemeanor:

a. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in Iowa Code sections 144.32, 144.33, and 144.34.

b. Refuses to provide information required by Iowa Code chapter 144.

c. Willfully violates any of the provisions of Iowa Code chapter 144 or refuses to perform any of the duties imposed upon the person.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; ARC 6108C, IAB 12/12/12, effective 2/2/22; see Delay note at end of chapter; ARC 6849C, IAB 2/8/23, effective 3/15/23]

641—95.18(144) Enforcement assistance.

95.18(1) The department shall report cases of alleged violations to the proper county attorney, with a statement of the facts and circumstances, for such action as is appropriate.

95.18(2) Upon request of the department, the attorney general shall assist in the enforcement of the provisions of Iowa Code chapter 144.

[ARC 0483C, IAB 12/12/12, effective 1/16/13; ARC 6108C, IAB 12/12/12, effective 2/2/22; see Delay note at end of chapter; ARC 6849C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code chapter 144.

[Filed ARC 0483C (Notice ARC 0376C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]¹

[Filed ARC 1074C (Notice ARC 0926C, IAB 8/7/13), IAB 10/2/13, effective 1/1/14]²

[Filed ARC 1402C (Notice ARC 1294C, IAB 1/22/14), IAB 4/2/14, effective 5/7/14]

[Filed ARC 2275C (Notice ARC 2155C, IAB 9/30/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 2933C (Notice ARC 2821C, IAB 11/23/16), IAB 2/1/17, effective 3/8/17]³

[Filed ARC 4398C (Notice ARC 4127C, IAB 11/21/18), IAB 4/10/19, effective 5/15/19]

[Filed ARC 5199C (Notice ARC 5087C, IAB 7/15/20), IAB 10/7/20, effective 11/11/20]

[Filed ARC 6108C (Notice ARC 5926C, IAB 9/22/21), IAB 12/29/21, effective 2/2/22]

[Filed ARC 6849C (Notice ARC 6648C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

- ¹ January 16, 2013, effective date of the rescission of Chapter 95 and the adoption of new Chapter 95 [ARC 0483C] delayed until adjournment of the 2013 General Assembly by the Administrative Rules Review Committee at its meeting held January 8, 2013; delay lifted at the meeting held March 8, 2013.
- ² January 1, 2014, effective date of 95.6(2) [ARC 1074C, Item 2] delayed 70 days by the Administrative Rules Review Committee at its meeting held October 8, 2013.
- ³ March 8, 2017, effective date of 95.2, 95.7 and 95.10 [ARC 2933C] delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 2017.

CHAPTER 109
PRESCRIPTION DRUG DONATION REPOSITORY PROGRAM

641—109.1(135M) Definitions. For purposes of this chapter, the following definitions apply:

“Centralized repository” means an entity approved by the contractor and licensed pursuant to applicable regulations of the Iowa board of pharmacy that accepts donated drugs, conducts a safety inspection of the drugs, and ships the donated drugs to a local repository to be dispensed in compliance with this chapter and federal and state laws, rules and regulations.

“Contractor” means the third party approved by the department to implement and administer the prescription drug donation repository program.

“Controlled substance” means the same as defined in Iowa Code section 124.101.

“Department” means the Iowa department of public health.

“Indigent” means a person with an income that is below 200 percent of the federal poverty level (FPL) as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

“Local repository” means a pharmacy or medical facility that elects to accept and dispense donated drugs and that meets the eligibility requirements of rule 641—109.3(135M).

“Medical facility” means any of the following:

1. A physician’s office.
2. A hospital.
3. A health clinic.
4. A nonprofit health clinic, including a federally qualified health center as defined in 42 U.S.C. § 1396d(1)(2)(B); a rural health clinic as defined in 42 U.S.C. § 1396d(1)(1); and a nonprofit health clinic that provides medical care to patients who are indigent, uninsured, or underinsured.

5. A free clinic as defined in Iowa Code section 135.24.

6. A charitable organization as defined in Iowa Code section 135.24.

7. A nursing facility as defined in Iowa Code section 135C.1.

“NDC #” means the unique national drug code number that identifies a specific approved drug.

“Nurse practitioner” means an advanced registered nurse practitioner as defined in 655 IAC Chapter 7.

“Pharmacist” means a pharmacist as defined in Iowa Code section 155A.3.

“Pharmacy” means a pharmacy as defined in Iowa Code section 155A.3.

“Physician” means an individual licensed under Iowa Code chapter 148.

“Physician assistant” means an individual licensed under Iowa Code chapter 148C.

“Prescription drug” means the same as defined in Iowa Code section 155A.3 and includes cancer drugs and antirejection drugs, but does not include controlled substances.

“Supplies” means the supplies necessary to administer the prescription drugs donated.

“USP” means United States Pharmacopoeia.

[ARC 6166C, IAB 2/9/22, effective 3/16/22; ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—109.2(135M) Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with Iowa Code chapter 135M relative to the following:

1. Requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies.
2. Eligibility criteria for individuals to receive donated prescription drugs and supplies.

641—109.3(135M) Eligibility criteria for program participation by medical facilities and pharmacies.

109.3(1) To be eligible for participation in the prescription drug donation repository program, a medical facility or pharmacy shall be in compliance with all applicable federal and state laws, including laws applicable to the storage and distribution of drugs and the appropriate licensure standards, and shall hold active, nonrestricted, state-issued licenses or registrations in good standing.

109.3(2) Participation in the prescription drug donation repository program is voluntary.

109.3(3) A pharmacy or medical facility may elect to participate in the prescription drug donation repository program by providing, on a form prescribed by the department and available on the program's web page, written notification to the centralized repository of all of the following:

a. The name, street address, and telephone number of the pharmacy or medical facility, and any state-issued license or registration number issued to the pharmacy or medical facility, including the name of the issuing agency.

b. The name and telephone number of the responsible pharmacist, physician, physician assistant or nurse practitioner who is employed by or under contract with the pharmacy or medical facility.

c. A statement, signed and dated by the responsible pharmacist, physician, physician assistant or nurse practitioner, indicating that the pharmacy or medical facility meets the eligibility requirements under this rule and shall comply with the requirements of this chapter.

109.3(4) Withdrawal from participation. A pharmacy or medical facility may withdraw from participation in the prescription drug donation repository program at any time by providing written notice to the centralized repository on a form prescribed by the department and available on the program's web page.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—109.4(135M) Standards and procedures for accepting donated prescription drugs and supplies.

109.4(1) Any individual who is 18 years of age or older may donate legally obtained prescription drugs or supplies to the centralized repository or a local repository if the drugs or supplies meet the requirements of this rule, as determined by a pharmacist who is employed by or under contract with a drug repository.

109.4(2) No drugs that require storage temperatures other than normal room temperature as specified by the manufacturer or United States Pharmacopoeia shall be donated or accepted as part of the prescription drug donation repository program. Drugs that require storage temperatures other than normal room temperature as specified by the manufacturer or USP shall not be donated or accepted because of the increased potential for these drugs to become adulterated. Excluded from this restriction are drugs donated directly from a drug manufacturer.

109.4(3) Controlled substances shall not be donated or accepted. Pursuant to federal and state laws, a controlled substance cannot be returned or reused once the drug has been dispensed to a patient.

109.4(4) The centralized repository or a local repository may accept a prescription drug only if all of the following requirements are met:

a. The drug is in its original sealed and tamper-evident packaging. However, a drug in a single-unit dose or blister pack with the outside packaging opened may be accepted if the single-unit-dose packaging is undisturbed;

b. The drug has been stored according to manufacturer or USP storage requirements;

c. The packaging contains the lot number and expiration date of the drug. If the lot number is not retrievable, all specified medications will be destroyed in the event of a recall, pursuant to Iowa board of pharmacy rules;

d. The drug has an expiration date that is more than six months after the date that the drug was donated. However, a donated prescription drug bearing an expiration date that is six months or less after the date the prescription drug was donated may be accepted and distributed if the drug is in high demand and can be dispensed for use prior to the drug's expiration date;

e. The drug does not have any physical signs of tampering or adulteration, and there is no reason to believe that the drug is adulterated;

f. The packaging does not have any physical signs of tampering, misbranding, deterioration, compromised integrity or adulteration; and

g. All drugs shall be inventoried at the centralized repository or a local repository. The inventory shall include the name of the drug, strength of the drug, quantity of the drug, and the date of donation if the drug has been continually under the control of a health care professional. If the drug has not been

continually under the control of a health care professional, the repository shall collect a donation form provided by the prescription drug donation repository program that is signed by the person making the donation or that person's authorized representative.

109.4(5) A repository may accept supplies necessary to administer the prescription drugs donated only if all of the following requirements are met:

- a. The supplies are in their original, unopened, sealed packaging;
- b. The supplies are not adulterated or misbranded; and
- c. All supplies shall be inventoried at the centralized repository or a local repository. The inventory shall include a description of the supplies and the date donated. Such inventory shall be recorded on a form provided by the prescription drug donation repository program.

109.4(6) Drugs and supplies may be donated on the premises of a participating centralized repository or a local repository to a person designated by the repository. A drop box may not be used to deliver or accept donations.

641—109.5(135M) Standards and procedures for inspecting and storing donated prescription drugs and supplies.

109.5(1) A licensed pharmacist employed by or under contract with the centralized repository or a local repository shall inspect donated prescription drugs and supplies to determine, to the extent reasonably possible in the judgment of the pharmacist, that the drugs and supplies are not adulterated or misbranded, are safe and suitable for dispensing, and are not ineligible drugs or supplies. The pharmacist who inspects the drugs shall sign an inspection record stating the above and attach it to the copy of the inventory or donor record provided with the drugs. If a local repository receives drugs and supplies from the centralized repository, the local repository does not need to reinspect the drugs and supplies.

109.5(2) The centralized repository and local repositories shall store donated drugs and supplies in a secure storage area under environmental conditions appropriate for the drugs or supplies being stored. Donated drugs and supplies may not be stored with nondonated inventory. When donated drugs are not inspected immediately upon receipt, a repository shall quarantine the donated drugs separately from all dispensing stock until the donated drugs have been inspected and approved for dispensing under the program.

109.5(3) Repositories shall destroy donated noncontrolled substances that are not suitable for dispensing and make a record of such destruction according to board of pharmacy 657—subrule 8.7(5). The destruction record shall be made in the same manner as prescribed for the record of return or destruction of a controlled substance in subrule 109.5(4).

109.5(4) Controlled substances shall not be accepted for donation.

a. Controlled substances submitted for donation shall be documented and returned immediately to the donor or the donor's representative that provided the drugs.

b. In the event controlled substances enter the centralized repository or a local repository and it is not possible or practicable to return the controlled substances to the donor or the donor's representative due to inability to identify the donor or the donor's representative or due to refusal by the donor or the donor's representative to receive them, abandoned controlled substances shall be documented and destroyed beyond reclamation pursuant to rules of the board of pharmacy. Such destruction shall be performed by a pharmacist or other person that has authority to dispense controlled substances and shall be witnessed by another responsible adult employee of the repository.

109.5(5) If a repository receives a recall notification, the repository shall perform a uniform destruction of all of the recalled prescription drugs in the repository and complete the destruction information form for all donated drugs destroyed. If a recalled drug has been dispensed, the repository shall immediately notify the recipient of the recalled drug pursuant to established drug recall procedures.

[ARC 6166C, IAB 2/9/22, effective 3/16/22]

641—109.6(135M) Standards and procedures for dispensing donated prescription drugs and supplies.

109.6(1) Donated drugs and supplies may be dispensed only if the drugs or supplies are prescribed by a health care practitioner for use by an eligible individual and are dispensed by a licensed pharmacist, physician, physician assistant or nurse practitioner.

109.6(2) A repository shall prioritize dispensing to an individual requesting drugs through the program as follows:

- a.* First, to an indigent individual;
- b.* Second, to an individual who has no active third-party prescription drug reimbursement coverage for the drug prescribed; and
- c.* Third, to any other individual if an indigent or uninsured individual is unavailable.

109.6(3) A repository shall dispense donated prescription drugs in compliance with applicable federal and state laws and regulations for dispensing prescription drugs, including all requirements relating to packaging, labeling, record keeping, drug utilization review, and patient counseling.

109.6(4) The centralized repository and a local repository shall remove the original donor's identification and the name of the dispensing pharmacy from the package prior to dispensing the drugs or supplies.

109.6(5) The centralized repository and a local repository shall be responsible for drug recalls and shall have an established mechanism to notify recipients in the event of a drug recall.

109.6(6) Prescription drugs or supplies donated under this program shall not be resold.

109.6(7) The participating centralized repository and local repositories may distribute drugs and supplies donated under this program to other participating repositories for use pursuant to the program. The repository distributing the drugs or supplies shall complete a transfer form.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—109.7(135M) Eligibility criteria for individuals to receive donated prescription drugs and supplies.

109.7(1) An individual who requests drugs from the prescription drug donation repository program shall certify to the repository that the individual is a resident of Iowa and meets one or both of the following criteria:

- a.* Is indigent;
- b.* Has no active third-party prescription drug reimbursement coverage for the drug prescribed.

109.7(2) The local repository shall collect from each individual recipient a signed intake collection form provided by the department or its contractor.

a. The intake collection form shall attest that:

- (1) The individual is a resident of the state of Iowa;
- (2) The individual's income does not exceed 200 percent of the FPL;
- (3) The individual is uninsured and has no prescription coverage or is underinsured and has no prescription coverage;

(4) The individual acknowledges that the drugs may have been donated; and

(5) The individual consents to a waiver of the requirement for child resistant packaging of the Poison Prevention Packaging Act.

b. The intake collection form will include an identification card to be given to the recipient for continued use for one year.

109.7(3) The identification card is valid for one year or until the new federal poverty guidelines have been published for all prescriptions and supplies.

109.7(4) A summary of data taken from the intake collection form is to be sent via regular mail, email or facsimile to the centralized repository for data collection.

641—109.8(135M) Forms and record keeping.

109.8(1) The following forms developed for the administration of this program shall be utilized by participants of the program and are available on the program's web page on the department's web site, idph.iowa.gov.

- a.* Prescription drug donation repository program notice of participation or withdrawal.

b. Prescription drug donation repository program donation, transfer, inventory or destruction record.

c. A record of medications dispensed.

109.8(2) The prescription drug donation repository program recipient data collection form and identification card are given to the recipient by the local repository, and the completed data collection form is collected from the recipient by the local repository.

109.8(3) Record-keeping requirements.

a. All records required to be maintained as a part of the prescription drug donation repository program shall be maintained for a minimum of five years by participating pharmacies and medical facilities.

b. Records required as part of this program shall be maintained pursuant to all current applicable practice acts.

c. Data collected by the prescription drug donation repository program from all participating repositories shall be submitted quarterly or upon request to the centralized repository. The data will consist of the information collected in accordance with 641—109.8(135M), Forms and record keeping.

d. The centralized repository and the contractor shall submit reports to the department as required by the contract or upon request of the department.

641—109.9(135M) Handling fee. A repository may charge the recipient of a donated drug a handling fee, not to exceed a maximum of 200 percent of the Medicaid professional dispensing fee as established by rule of the department of human services, to cover stocking and dispensing costs. A prescription drug dispensed through the prescription drug donation repository program shall not be eligible for reimbursement under the medical assistance program.

641—109.10(135M) List of drugs and supplies program will accept. All prescription drugs, excluding controlled substances, that have been approved for medical use in the United States, that are listed in the USP or National Formulary (USP/NF), and that meet the criteria for donation established by these rules may be accepted for donation under the prescription drug donation repository program.

641—109.11(135M) Exemption from disciplinary action, civil liability and criminal prosecution.

109.11(1) A drug manufacturer acting reasonably and in good faith is not subject to criminal prosecution or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the drug manufacturer that is donated under this chapter, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

109.11(2) Except as provided in subrule 109.11(3), a person other than a drug manufacturer subject to subrule 109.11(1), acting reasonably and in good faith, is immune from civil liability and criminal prosecution for injury to or the death of an individual to whom a donated prescription drug is dispensed under this chapter and shall be exempt from disciplinary action related to the person's acts or omissions related to the donation, acceptance, distribution, or dispensing of a donated prescription drug under this chapter.

109.11(3) The immunity and exemption provided in subrule 109.11(2) does not extend to any of the following:

a. The donation, acceptance, distribution, or dispensing of a donated prescription drug under this chapter by a person if the person's acts or omissions are not performed reasonably and in good faith.

b. Acts or omissions outside the scope of the program.

641—109.12 and 109.13 Reserved.

641—109.14(135M) Prescription drug donation repository in disaster emergencies. The following are the requirements for the department to receive and distribute prescription drugs and supplies in preparation for a disaster emergency proclaimed by the governor or in preparation for a public health disaster.

109.14(1) The department may receive prescription drugs and supplies directly from the prescription drug donation repository contractor and dispense prescription drugs and supplies through licensed personnel during or in preparation for a disaster emergency proclaimed by the governor pursuant to Iowa Code section 29C.6 or during or in preparation for a public health disaster as defined in Iowa Code section 135.140(6).

109.14(2) The department may receive and distribute prescription drugs and supplies as defined in Iowa Code section 135.142 to any Iowan who has been a victim of a disaster emergency proclaimed by the governor.

[ARC 8983B, IAB 8/11/10, effective 9/15/10; ARC 6166C, IAB 2/9/22, effective 3/16/22]

These rules are intended to implement Iowa Code chapter 135M.

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[Filed ARC 6847C (Notice ARC 6645C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 142
OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

641—142.1(144A) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Adult*” means an individual 18 years of age or older.

“*Attending physician*” means a physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

“*Attending physician assistant*” means the physician assistant selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

“*Comfort care*” means care within the scope of the health care provider’s training and certification to alleviate pain and suffering, but does not include resuscitative measures.

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

“*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 rule by the department.
5. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been certified in that procedure.

“*EMS provider*” means an emergency medical care provider as defined in Iowa Code section 147A.1.

“*Health care provider*” means a person, including an emergency medical care provider, who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

“*Hospital*” means any hospital licensed under the provisions of Iowa Code section 135B.1.

“*Life-sustaining procedure*” means any medical procedure, treatment, or intervention, including resuscitation, which utilizes mechanical or artificial means to sustain, restore or supplant a spontaneous vital function, and when applied to a patient in a terminal condition, would serve only to prolong the dying process. “Life-sustaining procedure” does not include the provision of nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

“*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 providers.

“*Medical director*” means any physician licensed under Iowa Code chapter 148 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.

“*On-line medical direction*” means immediate medical direction provided directly to service program emergency medical care 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.

“*Out-of-hospital do-not-resuscitate identifier*” or “*OOH DNR identifier*” means a durable yet easily removable unique identification approved by the department and worn by a patient who has an out-of-hospital do-not-resuscitate order.

“*Out-of-hospital do-not-resuscitate order*” or “*OOH DNR order*” means a written order on a form approved by the department, signed by an attending physician, executed in accordance with the requirements of Iowa Code section 144A.7A and issued consistent with Iowa Code section 144A.2, that directs the withholding or withdrawal of resuscitation when an adult patient in a terminal condition is outside the hospital.

“*Out-of-hospital do-not-resuscitate protocol*” or “*OOH DNR protocol*” means the statewide protocol approved by the department and intended to avoid unwarranted resuscitation by emergency medical care providers when a valid out-of-hospital do-not-resuscitate order or identifier is encountered.

“*Patient*” means any individual who is sick, injured, or otherwise incapacitated.

“*Physician*” means any individual licensed under Iowa Code chapter 148.

“*Physician assistant*” or “*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 assistants. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the actions of emergency medical care providers.

“*Qualified patient*” means any adult patient as defined in Iowa Code section 144A.2.

“*Registered nurse*” or “*RN*” means an individual licensed pursuant to Iowa Code chapter 152.

“*Resuscitation*” means any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise to sustain life.

“*Service program*” or “*service*” means any medical care ambulance service or nontransport service that has received authorization by the department.

“*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 providers when such providers are providing emergency medical care.

“*Terminal condition*” means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—142.2(144A) Purpose. These rules direct EMS providers and service programs on the processes for the recognition of OOH DNR orders or identifiers and implementation of the OOH DNR protocol. In addition, these rules set forth guidelines for consideration by health care providers and organizations to help ensure uniform and orderly understandings, processes and procedures for the use and implementation of OOH DNR orders consistent with the provisions of Iowa Code chapter 144A.

641—142.3(144A,147A) Responsibilities of the department.

142.3(1) OOH DNR physician or physician assistant order. The department designates the OOH DNR order form contained in Appendix A as the uniform OOH DNR order form to be used statewide. If an attending physician or attending physician assistant issues an OOH DNR order for a qualified patient, the physician or physician assistant shall use the form contained in Appendix A.

142.3(2) OOH DNR personal identifier. The department designates the identifier supplied by MedicAlert® as the uniform personal identifier to be used for mobile qualified patients statewide. Instructions for obtaining a uniform personal identifier are contained in Appendix A.

142.3(3) OOH DNR protocol. The department designates the OOH DNR protocol contained in Appendix B as the uniform protocol to be used by EMS providers in implementing an OOH DNR order.

142.3(4) Appendix A and Appendix B forms. Forms referenced in subrules 142.3(1) through 142.3(3) are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or through the bureau of EMS’s website at www.idph.state.ia.us/ems.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—142.4(144A,147A) EMS providers.

142.4(1) Uniform protocol. EMS providers shall act in accordance with the department’s OOH DNR protocol when implementing an OOH DNR order. EMS service programs shall incorporate the OOH DNR protocol as part of their service protocols and, using educational materials consistent with the curriculum developed and approved by the department, shall inform and educate EMS providers on the protocol’s requirements as well as the requirements of Iowa Code chapter 144A and these rules.

142.4(2) Responsibility of the EMS provider. The EMS provider responding outside a hospital as a member of a service program shall:

- a. Evaluate the patient's status and needs through an assessment consistent with the provider's training and certification.
- b. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.
- c. Honor the OOH DNR order or OOH DNR identifier worn by the patient.
- d. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.
- e. Follow the OOH DNR protocol.
- f. Provide comfort care to the patient at all times.
- g. Contact on-line medical direction for further instructions as necessary to provide appropriate patient care.
- h. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the EMS provider shall provide the necessary and appropriate resuscitation.
- i. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order.

641—142.5(144A) Guidelines for non-EMS health care providers, patients, and organizations. In order to encourage understanding and implementation of OOH DNR orders and protocols throughout Iowa and honor a qualified patient's wishes and intent regarding the provision of life-sustaining procedures in an out-of-hospital setting consistent with the requirements of Iowa Code chapter 144A, the following guidelines should be considered.

142.5(1) Attending physicians or attending physician assistants who issue OOH DNR orders. The attending physician or attending physician assistant should ensure that the following are accomplished:

- a. Establish that the patient is qualified because the patient:
 - (1) Is an adult; and
 - (2) Has a terminal condition.
- b. Explain to the patient or the individual legally authorized to act on the patient's behalf the implications of an OOH DNR order.
- c. If the qualified patient or individual legally authorized to act on the patient's behalf decides that the patient should not be resuscitated, the attending physician or attending physician assistant may issue the OOH DNR order on the prescribed uniform order form. The order will direct health care providers to withhold or withdraw resuscitation.
- d. Explain to the qualified patient or the individual legally authorized to act on the patient's behalf how the OOH DNR order is revoked.
- e. Include a copy of the order in the qualified patient's medical record.
- f. Provide a copy of the order to the qualified patient or the individual legally authorized to act on the patient's behalf.

142.5(2) Qualified patients or legally authorized persons. A qualified patient or a person legally authorized to act on a qualified patient's behalf should:

- a. Make an informed decision concerning resuscitation in the face of a terminal condition.
- b. Ensure that the qualified patient's family members are aware of this decision and inform them of the location of the OOH DNR order and the purpose of an OOH DNR identifier.
- c. Understand the process for revocation as described in rule 641—142.6(144A).

142.5(3) Non-EMS health care providers. A non-EMS health care provider contemplating resuscitation for a patient should:

- a. Evaluate the patient's status and needs through an assessment consistent with the provider's training, certification and licensure.
- b. Determine that the presenting condition is within the scope of the patient's terminal condition and is not the result of a motor vehicle collision, fire, mass casualty or other cause of a sudden accident or injury.

- c. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.
- d. Honor the OOH DNR order or OOH DNR identifier worn by the patient.
- e. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.
- f. Provide comfort care to the patient at all times.
- g. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the health care provider shall provide the necessary and appropriate resuscitation.
- h. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order or OOH DNR identifier.

142.5(4) Hospitals. A hospital licensed under Iowa Code chapter 135B:

- a. Shall not be precluded from honoring an OOH DNR order entered in accordance with this chapter and in compliance with established hospital policies and protocols.
- b. Should, to avail itself of the immunities provided within Iowa Code chapter 142, establish such policies and protocols to address an OOH DNR order or identifier encountered on a person who presents to the emergency department or in any other area within the facility if the person presents as a patient or visitor.
- c. Should integrate policies and procedures with the OOH DNR protocol for hospital-based ambulance service programs, if present.

142.5(5) Other health care organizations. A nursing home, home health care agency, hospice, or other health care organization should establish policies and protocols consistent with these rules to address admitted patients who have OOH DNR orders.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—142.6(144A) Revocation of the out-of-hospital do-not-resuscitate order. An OOH DNR order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as designated on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked, without regard to the mental or physical condition of the patient. A revocation is only effective as to the health care provider upon communication to that provider by the patient, an individual authorized to act on the patient's behalf as designated in the OOH DNR order, or by another person to whom the revocation is communicated by the patient.

641—142.7(144A) Personal wishes of family members or other individuals who are not authorized to act on the patient's behalf. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

641—142.8(144A) Transfer of patients.

142.8(1) An attending physician or attending physician assistant who is unwilling to comply with an OOH DNR order or who is unwilling to comply with the provisions of Iowa Code section 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician or physician assistant.

142.8(2) If the policies of a hospital, nursing home, home health care agency, hospice or other health care organization preclude compliance with the OOH DNR order of a qualified patient, the provider shall take all reasonable steps to effect the transfer of the patient to an organization in which the provisions of Iowa Code section 144A.7A can be carried out.

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

641—142.9(144A) Application to existing orders.

142.9(1) An OOH DNR order or similar order executed prior to September 10, 2003, is valid and shall be honored in accordance with the then-applicable provisions of the law.

142.9(2) Health care providers may honor an OOH DNR order or identifier from another state if it can be validated and applied in a manner consistent with the OOH DNR order or identifier prescribed in

these rules. In cases where there is uncertainty, clarification should be sought through on-line medical direction or resuscitation efforts should be initiated.

These rules are intended to implement Iowa Code sections 144A.7A and 147A.4.

[Filed 7/18/03, Notice 5/28/03—published 8/6/03, effective 9/10/03]

[Filed ARC 7550B (Notice ARC 7357B, IAB 11/19/08), IAB 2/11/09, effective 3/18/09]

[Filed ARC 6847C (Notice ARC 6645C, IAB 11/16/22), IAB 2/8/23, effective 3/15/23]

APPENDIX A

Iowa Department of Public Health
OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER

(Please type or print)

Date of Order: ____/____/____

Patient Information:

Name: (Last)_____(First)_____(Middle)_____

Address: _____(City)_____ (Zip)_____

Date of Birth: ____/____/____ Gender (Circle): M or F

Name of Hospice or Care Facility (if applicable): _____

Attending Physician or Physician Assistant Order

As the attending physician or attending physician assistant for the above-named patient, I certify that this individual is over 18 years of age and has a terminal diagnosis. After consultation with this patient (or the patient’s legal representative), I hereby direct any and all health care providers, including qualified emergency medical services (EMS) personnel, to withhold or withdraw the following life-sustaining procedures in accordance with Iowa law (Iowa Code chapter 142A):

- Cardiopulmonary Resuscitation/Cardiac Compression (Chest Compressions).
- Endotracheal Intubation/Artificial or Mechanical Ventilation (Advance Airway Management).
- Defibrillation and Related Procedures.
- Use of Resuscitation Drugs.

This directive does NOT apply to other medical interventions for comfort care.

**Signature of Attending Physician (MD, DO) or
Attending Physician Assistant**

_____/_____/_____
Date

**Printed Name of Attending Physician or Attending
Physician Assistant**

(____)____-_____
**Physician’s or Physician Assistant’s
Telephone (Emergency)**

To the extent that it is possible, a person designated by the patient may revoke this order on the patient’s behalf. If the patient wishes to authorize any other person(s) to revoke this order, the patient MUST list those persons’ names below:

- Name: _____
- Name: _____
- Name: _____
- Name: _____

Patients, please note: Directions for obtaining a uniform identifier are listed on the back of this form. The uniform identifier is the key way the health care provider and/or EMS personnel can quickly recognize that you have an Out-of-Hospital Do-Not-Resuscitate order. If you are not wearing an identifier, the health care provider and/or EMS personnel may not realize that you do not want to be resuscitated.

Physicians or physician assistants, please note: Information regarding the completion of an Out-of-Hospital Do-Not-Resuscitate order is on the back of this form.

APPENDIX A

Directions for obtaining a uniform identifier:

The uniform identifier may be obtained through MedicAlert®¹, which requires:

1. A completed MedicAlert® application, which is available in physician or physician assistant offices or through MedicAlert® by phoning (800)432-5378 or the website www.medicalert.org, and fee.
2. A copy of this completed OOH DNR order, which must accompany the MedicAlert® application or be sent to MedicAlert® prior to the identifier's being mailed.

¹*MedicAlert® is a nonprofit 501C membership organization.*

Suggested guidelines for physicians or physician assistants:

1. Please review the Iowa Out-of-Hospital Do-Not-Resuscitate order and related protocol with the patient/patient's legal representative(s). The following points may be helpful:
 - Patient/patient's legal representative(s) listed on this order must understand the significance of this order, that in the event the patient's heart or breathing stops or malfunctions, the anticipated result of this order is death.
 - Patient/patient's legal representative(s) listed on this order may revoke this directive at any time. However, the desire to revoke must be communicated to the EMS or other health care professionals at the scene.
 - It is important to emphasize that this order does not apply to medical interventions to make the patient more comfortable.
 - The importance of wearing the uniform identifier for those qualified patients who would benefit from the mobility this offers should be stressed. It is also helpful to walk patients through the process they must follow to acquire the identifier.
2. Provide a copy of this order to the patient/patient's legal representative(s) listed on this order and place the original in the patient's medical records.

The OOH DNR Order form is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or through the Bureau of EMS's website idph.iowa.gov/BETS/EMS/rules.

[ARC 7550B, IAB 2/11/09, effective 3/18/09]

APPENDIX B

EMS OUT-OF-HOSPITAL DO-NOT-RESUSCITATE PROTOCOL

Purpose: This protocol is intended to avoid unwarranted resuscitation by emergency care providers in the out-of-hospital setting for a *qualified patient*.¹ There must be a valid Out-of-Hospital Do-Not-Resuscitate (OOH DNR) order signed by the qualified patient's attending physician or physician assistant or the presence of the OOH DNR identifier indicating the existence of a valid OOH DNR order.

No resuscitation: Means withholding any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to:

1. Chest compressions,
2. Defibrillation,
3. Esophageal/tracheal/double-lumen airway; endotracheal intubation, or
4. Emergency drugs to alter cardiac or respiratory function or otherwise sustain life.

Patient criteria: The following patients are recognized as qualified patients to receive no resuscitation:

1. The presence of the uniform OOH DNR order or uniform OOH DNR identifier, or
2. The presence of the attending physician or attending physician assistant to provide direct verbal orders for care of the patient.

The presence of a signed physician or physician assistant order on a form other than the uniform OOH DNR order form approved by the department may be honored if approved by the service program EMS medical director. However, the immunities provided by law apply only in the presence of the uniform OOH DNR order or uniform OOH DNR identifier. When the uniform OOH DNR order or uniform OOH DNR identifier is not present, contact must be made with on-line medical control and on-line medical control must concur that no resuscitation is appropriate.

Revocation: An OOH DNR order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as listed on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

Comfort Care (♥): When a patient has met the criteria for no resuscitation under the foregoing information, the emergency care provider should continue to provide that care which is intended to make the patient comfortable (a.k.a. ♥ Comfort Care). Whether other types of care are indicated will depend upon individual circumstances for which medical control may be contacted by or through the responding ambulance service personnel.

♥ **Comfort Care** may include, but is not limited to:

1. Pain medication.
2. Fluid therapy.
3. Respiratory assistance (oxygen and suctioning).

¹*Qualified patient* means an adult patient determined by an attending physician or attending physician assistant to be in a terminal condition for which the attending physician or attending physician assistant has issued an Out-of-Hospital DNR order in accordance with the law. (Rule 641—142.1(144A), definitions)

[ARC 6847C, IAB 2/8/23, effective 3/15/23]

PHARMACY BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657]
under the “umbrella” of Public Health Department by 1986 Iowa Acts, ch 1245; renamed by 2007 Iowa Acts, Senate File 74]

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

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

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

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

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

“*Board*” means the Iowa board of pharmacy.

“*CSA*” means the Iowa uniform controlled substances Act.

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

“*DEA*” means the United States Department of Justice, Drug Enforcement Administration.

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

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

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

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

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.

2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.

3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.

4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.

5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.

6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.

7. Care facilities that are located in Iowa.

8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.

9. Animal shelters and dog training facilities that are located in Iowa.

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

657—10.4 Reserved.

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

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

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

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

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

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

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

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

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

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

10.6(2) Delinquent registration reactivation beyond grace period. If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation. The nonrefundable fee for reactivation shall be \$360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose

the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.

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

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

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

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

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

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

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

10.7(6) Conducting chemical analysis with controlled substances. A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule. When submission of an application and fee is required, such application and fee shall be timely submitted pursuant to rule 657—10.5(124). A registrant which has timely submitted an application for registration modification and fee may continue to service Iowa patients while the registration modification is pending final approval. A registrant which

has submitted an application for registration modification after the required date of submission pursuant to this rule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$90 in addition to the application fee. A registrant which has submitted an application for registration modification 31 days or later following the required date of submission pursuant to this rule shall be assessed a nonrefundable late penalty fee of \$360.

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

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

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

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

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

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

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

10.9(4) *Change of ownership of registered business entity.* A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's ownership.

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

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

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

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

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

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

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

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

- a.* Has furnished false or fraudulent material information.
- b.* Has had the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or otherwise sanctioned.
- c.* Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even if entry of the judgment or sentence has been withheld and the applicant or registrant has been placed on probation.
- d.* Has committed such acts as would render the applicant's or registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.
- e.* Has been subject to discipline by the applicant's or registrant's respective professional licensing board and the discipline revokes or suspends the applicant's or registrant's professional license or otherwise disciplines the applicant's or registrant's professional license in a way that restricts the applicant's or registrant's authority to handle or prescribe controlled substances. A copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.
- f.* Has failed to obtain or maintain active registration while engaged in activities which require registration.

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

- a. Maintenance of effective controls against diversion of controlled substances into channels other than legitimate medical, scientific, or industrial channels.
- b. Compliance with applicable state and local law.
- c. Any convictions of the applicant or registrant under any federal and state laws relating to any controlled substance.
- d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's or registrant's establishment of effective controls against diversion.
- e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.
- f. Suspension or revocation of the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.
- g. Any other factors relevant to and consistent with the public health and safety.
- h. Failure of a prescribing practitioner, except a licensed veterinarian, to register with the PMP pursuant to subrule 10.5(2).

10.10(3) Proceedings.

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

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

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

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

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

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

657—10.12(124) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

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

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

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

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

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

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

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

- a.* The type of activity conducted.
- b.* The type, form, and quantity of controlled substances handled.
- c.* The location of the premises and the relationship such location bears to security needs.
- d.* The type of building construction comprising the facility and the general characteristics of the building or buildings.
- e.* The type of vault, safe, and secure enclosures available.
- f.* The type of closures on vaults, safes, and secure enclosures.
- g.* The adequacy of key control systems or combination lock control systems.
- h.* The adequacy of electronic detection and alarm systems, if any.
- i.* The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.
- j.* The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.
- k.* The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.
- l.* The availability of local police protection or of the registrant's or applicant's security personnel.
- m.* The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.13(3) Manufacturing and compounding storage areas. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

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

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

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

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

- a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.
- b. Access to controlled substances and records of controlled substances by employees of the registrant.
- c. Proper disposition of controlled substances.
- d. To the extent possible, a separation of duties related to the purchasing, receiving, stocking, dispensing, and reconciling of controlled substance inventory.
- e. The reconciliation of controlled substances in Schedule II pursuant to subrule 10.18(4).
- f. The accountability measures for controlled substances in Schedules III through V pursuant to rule 657—10.20(124).
- g. A controlled substance accountability program to document review of controlled substance inventory adjustments, review patterns of controlled substance loss, and create an action plan following a report of theft or loss pursuant to subrule 10.21(5).

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

657—10.15 Reserved.

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

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

- a. The name of the substance.
- b. The strength and dosage form of the substance.
- c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.
- d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.
- e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

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

- a. The name, address, and DEA registration number of the supplier.
- b. The name, address, and DEA registration number of the practitioner.
- c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.
- d. The date of delivery.

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

657—10.17(124) Ordering or distributing Schedule I or II controlled substances. A registrant authorized to order or distribute Schedule I or II controlled substances shall do so only pursuant to

and in compliance with DEA regulations via a DEA Form 222 or via the DEA Controlled Substances Ordering System (CSOS).

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

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

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

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

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

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

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

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

initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

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

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

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

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

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

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

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

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

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

(1) The name of the substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Perpetual inventory log, which may be maintained by electronic means, so long as the system complies with the perpetual inventory requirements in rule 657—10.18(124).

2. Documented audit and reconciliation of all controlled substances every six months.

3. Routine documented cycle counts of substances, so long as all controlled substances are counted every 90 days and identified discrepancies are investigated and documented.

4. Other measure preapproved by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The controlled substance wasted.

b. The date of wastage.

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

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

e. The reason for the waste.

f. The signatures of both individuals involved in the wastage.

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

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

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

10.23(2) Hospice disposal.

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

b. A physician of a hospice program patient may dispose of a patient's controlled substance which is no longer required due to a change in the patient's care plan.

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

657—10.24(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for

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

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

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

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

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

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

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

10.24(2) Verification by pharmacist.

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

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

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

10.24(4) Valid prescriber/patient relationship. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled

substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

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

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

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

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

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

- a. The name and address of the person to whom dispensed.
- b. The date of dispensing.
- c. The name or NDC number, strength, dosage form, and quantity of the substance dispensed.
- d. The name of the prescriber, unless dispensed by the prescriber.
- e. The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.
- f. The serial number or unique identification number of the prescription.

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

657—10.26(124) Schedule II emergency prescriptions.

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

- a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.
- b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.
- c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

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

- a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.
- b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

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

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

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

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

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

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

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

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

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

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

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

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients

with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

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

10.27(3) Patient or prescriber request. At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2) “g,” the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.

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

657—10.28(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 3859C, IAB 6/20/18, effective 7/25/18]

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

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

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

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

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

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

10.29(6) Prescriber’s discretion. Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber’s patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

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

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

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

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

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

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

657—10.31 Reserved.

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

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

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

- a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.
- b. The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.
- c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.
- d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

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

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

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

657—10.33(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

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

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

- a. 240 cc (8 ounces) of any controlled substance containing opium.
- b. 120 cc (4 ounces) of any other controlled substance.
- c. 48 dosage units of any controlled substance containing opium.
- d. 24 dosage units of any other controlled substance.

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

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

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

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

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

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

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

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

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

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

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

10.34(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

- a. Alternate record contents.* The alternate record shall contain the following:
- (1) The name, address, and signature of the purchaser.
 - (2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
 - (3) The date and time of the purchase.
 - (4) The name or unique identification of the dispenser who approved the dispensing of the product.
- b. Alternate record format.* The record shall be maintained using one of the following options:
- (1) A hard-copy record.
 - (2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.
 - (3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.
- c. PTS records retrieval.* Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

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

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

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

657—10.35 Reserved.

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

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

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

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

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

657—10.37 Reserved.

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

10.38(1) Designation of new controlled substance. The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than

30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

y. 2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Butonitazene.

z. 2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other names: Etodesnitazene; etazene.

aa. N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Flunitazene.

ab. N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Metodesnitazene.

ac. N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Metonitazene.

ad. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other names: N-pyrrolidino etonitazene; etonitazepyne.

ae. N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Protonitazene.

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

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

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

n. Serdexmethylphenidate.

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

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

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

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

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

i. 4,4’-Dimethylaminorex. Other names: 4,4’-DMAR;
4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine;
4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine.

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

bg. Daridorexant.

[ARC 5914C, IAB 9/22/21, effective 10/27/21; ARC 6074C, IAB 12/15/21, effective 1/19/22; ARC 6255C, IAB 3/23/22, effective 4/27/22; ARC 6521C, IAB 9/21/22, effective 10/26/22; ARC 6689C, IAB 11/30/22, effective 1/4/23; ARC 6843C, IAB 2/8/23, effective 3/15/23]

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

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

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

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

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

657—10.43(124) Reporting discipline and criminal convictions. A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary

period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.

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

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

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

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

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

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CHAPTER 37
IOWA PRESCRIPTION MONITORING PROGRAM

657—37.1(124) Purpose and scope. These rules establish a prescription monitoring program (PMP) that compiles a central database of reportable prescriptions dispensed to patients in Iowa. An authorized health care practitioner shall access PMP information when mandated by the practitioner’s licensing authority regarding the practitioner’s patient to assist in determining appropriate treatment options and to improve the quality of patient care. The PMP is intended to provide a practitioner with a resource for information regarding a patient’s use of controlled substances and to serve as a tool to assess a prescriber’s prescribing practices. This database will assist the practitioner in identifying any potential diversion, misuse, or abuse of controlled substances without impeding the appropriate medical use of controlled substances.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply.

“*Administer*” means to provide or apply a controlled substance to a patient for immediate use within the prescribing practitioner’s practice location. Administration does not include dispensing.

“*Board*” means the Iowa board of pharmacy.

“*Client*” means the owner, owner’s designee, or other person responsible for an animal patient.

“*Controlled substance*” means a drug in Schedules II through V set forth in Iowa Code chapter 124, division II.

“*Council*” means the PMP advisory council established pursuant to Iowa Code section 124.555 to provide oversight and to co-manage PMP activities with the board.

“*CSA registration*” means registration with the board under the Iowa uniform controlled substances Act pursuant to 657—Chapter 10.

“*DEA number*” means the registration number issued to an individual or pharmacy by the U.S. Department of Justice, Drug Enforcement Administration (DEA), authorizing the individual or pharmacy to engage in the prescribing, dispensing, distributing, or procuring of a controlled substance.

“*Dispense*” means to provide a controlled substance to a patient for self-use outside of the prescribing practitioner’s practice location. Dispensing does not include administration.

“*Dispenser*” means a pharmacy or prescriber, regardless of location, who delivers to the ultimate user a substance required to be reported to the PMP. “Dispenser” does not include a person exempt from reporting pursuant to subrule 37.7(2).

“*First responder*” means an emergency medical care provider, a registered nurse staffing an authorized service program under Iowa Code section 147A.12, a physician assistant staffing an authorized service program under Iowa Code section 147A.13, a firefighter, or a peace officer as defined in Iowa Code section 801.4, who is trained and authorized to administer an opioid antagonist.

“*Health care facility*” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with an intellectual disability.

“*Health care professional*” means a person who, by certification, registration, or licensure, is qualified to provide and is engaged in providing health care to patients. “Health care professional” does not include clerical or administrative staff. A health care professional shall be credentialed in a manner that permits verification and regulation of the health care professional’s credentials.

“*Health care system*” means an organization that includes at least one hospital or at least one group of practitioners that provides comprehensive care that are connected with each other through common ownership or management.

“*HIPAA*” means the Health Insurance Portability and Accountability Act.

“*Law enforcement*” means an entity or agency with jurisdiction to investigate or prosecute violations of criminal law. “Law enforcement” includes, but is not limited to, such agencies as police departments, United States attorneys, the DEA, county attorneys, and the Medicaid fraud control unit.

“*Licensing authority*” means an agency that licenses or registers health care professionals and has jurisdiction to enforce governing laws over those individuals who are licensed or registered. “Licensing authority” includes, but is not limited to, professional licensing boards and the DEA.

“*NarxCare*” means an analytics tool and care management platform that helps practitioners analyze real-time data from the PMP. The platform analyzes patient data and history to provide a patient risk score and usage patterns to help practitioners identify potential risk factors.

“*NDC number*” means the universal product identifier used in the United States to identify a specific human drug.

“*Opioid antagonist*” means a drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors with the intention to reverse overdose, including but not limited to naloxone hydrochloride or any other similarly acting drug approved by the United States Food and Drug Administration.

“*Patient*” means a person or animal to whom a prescription is prescribed or dispensed.

“*PMP administrator*” means staff persons designated to manage and administer the PMP under the direction and oversight of the board and the council.

“*Practitioner*” means a prescriber or a pharmacist.

“*Practitioner’s delegate*” means a health care professional who is under the supervision of a PMP-registered practitioner and who is authorized by the practitioner to access PMP information on the practitioner’s behalf.

“*Prescriber*” means an individual with an active CSA registration who has the authority to prescribe controlled substances. For the purposes of this chapter, “prescriber” does not include a licensed veterinarian.

“*Prescription monitoring program*” or “*PMP*” means the program established pursuant to these rules for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

“*Reportable prescription*” means the record of a controlled substance administered or dispensed by a practitioner and the record of an opioid antagonist dispensed by a practitioner or administered by a first responder. “Reportable prescription” shall not include records identified in subrule 37.7(1). “Reportable prescription” shall include, but not be limited to:

1. The dispensing of a controlled substance to an emergency department patient;
2. The administration of a controlled substance to a patient at the discretion of the treating practitioner
3. The administration or dispensing of an opioid antagonist to an emergency department patient;
4. The dispensing of a controlled substance sample;
5. The dispensing of a controlled substance or opioid antagonist to a patient upon discharge from a hospital or care facility; and
6. The dispensing of a Schedule V controlled substance without a prescription pursuant to rule 657—10.33(124,155A).

[ARC 4397C, IAB 4/10/19, effective 5/15/19; ARC 5545C, IAB 4/7/21, effective 5/12/21; ARC 6844C, IAB 2/8/23, effective 3/15/23]

657—37.3(124) Registration. Registration for the PMP pursuant to this rule shall be via the Iowa PMP AWARe website at iowa.pmpaware.net.

37.3(1) Prescribers. A prescriber shall register for the PMP at the same time the prescriber registers or renews a CSA registration pursuant to 657—Chapter 10. A licensed veterinarian with an active CSA registration may register for the PMP. Registration for the PMP shall also require the prescriber’s DEA number.

37.3(2) Pharmacists. A pharmacist who is involved in patient care shall register for the PMP at the same time the pharmacist becomes licensed or renews a license pursuant to 657—Chapter 2.

37.3(3) Practitioner’s delegates. A practitioner may authorize an adequate number of health care professionals who actively work with the practitioner to act as the practitioner’s delegates for the purpose of requesting PMP information. A practitioner’s delegate shall be licensed, registered, certified, or otherwise credentialed as a health care professional in a manner that permits verification of the health

care professional's credentials. The practitioner shall be responsible for the PMP information access of the practitioner's delegates.

37.3(4) Law enforcement officials. A law enforcement official may register for the PMP to access information by order, subpoena, or other means of legal compulsion relating to a specific investigation and supported by a determination of probable cause.

37.3(5) Licensing authority. A licensing authority official may register for the PMP to access information by order, subpoena, or other means of legal compulsion relating to a specific investigation and supported by a determination of probable cause.

37.3(6) Medical examiners and medical examiner investigators. A medical examiner or a medical examiner investigator may register for the PMP to access information when the information relates to an investigation being conducted by the examiner or investigator.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.4(124) Prescription monitoring program advisory council.

37.4(1) Membership. The membership of the PMP advisory council may include, but need not be limited to:

- a. One pharmacist licensed under Iowa Code chapter 155A;
- b. One physician licensed under Iowa Code chapter 148;
- c. One advanced registered nurse practitioner licensed under Iowa Code chapter 152;
- d. One physician assistant licensed under Iowa Code chapter 148C;
- e. One dentist licensed under Iowa Code chapter 153;
- f. One veterinarian licensed under Iowa Code chapter 169;
- g. One individual who is registered with the PMP as a practitioner's delegate;
- h. One individual who is eligible to utilize the PMP in an investigative capacity, such as a law enforcement official, licensing authority representative, or medical examiner; and
- i. One member of the public who is not eligible to register with the PMP.

37.4(2) Term of appointment. Council members shall be appointed by the board for a three-year term and may be reappointed by the board for two additional terms, for a maximum of three terms. Each term shall expire on June 30 of the third year of the term.

37.4(3) Quorum. Three members of the council constitutes a quorum.

37.4(4) Termination of appointment. A council member who is no longer eligible or able to serve on the council shall submit a written resignation to the board. A council member who does not attend three consecutive regular meetings of the council shall be deemed to have submitted a resignation.

[ARC 6844C, IAB 2/8/23, effective 3/15/23]

657—37.5 Reserved.

657—37.6(124) Security of PMP credentials. Each user registered to access PMP information shall securely maintain and use the login and password and any other secure access credentials assigned to the individual user. Except in an emergency when a patient would be placed in greater jeopardy by restricting PMP information access to the user, a registered user shall not share the user's secure access credentials.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.7(124) PMP reporting—exemptions.

37.7(1) Exempted dispensing or administration. The dispensing or administration of a controlled substance as described in this subrule shall not be considered a reportable prescription. A pharmacy engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in this subrule shall notify the PMP administrator of the exempted practice, and the pharmacy shall not be required to report to the PMP.

- a. The dispensing by a licensed hospital pharmacy for the purposes of inpatient hospital care.
- b. The dispensing by a licensed pharmacy for a patient residing in a health care facility or inpatient hospice facility.

c. The administration by a prescriber of a controlled substance for the purposes of outpatient procedures and treatment.

d. The sale by a licensed pharmacy of a Schedule V controlled substance without a prescription which sale is subject to the reporting requirements of 657—Chapter 100.

37.7(2) Exempted practitioners. The following entities or individuals shall not be required to report to the PMP and shall not be required to notify the PMP administrator of their exempted status:

a. A licensed pharmacy that does not have a CSA registration and does not dispense controlled substances in or into Iowa.

b. A licensed veterinarian who administers or dispenses a controlled substance in the normal course of the veterinarian's professional practice.

c. A DEA-registered narcotic treatment program which is subject to the record-keeping provisions of 21 CFR Section 1304.24.

[ARC 4397C, IAB 4/10/19, effective 5/15/19; ARC 5545C, IAB 4/7/21, effective 5/12/21]

657—37.8(124) PMP reporting—dispensing prescribers. Each dispensing prescriber, unless exempt pursuant to rule 657—37.7(124), shall submit to the PMP a record of each reportable prescription dispensed during a reporting period pursuant to subrule 37.12(2). For purposes of prescriber dispensing, the prescriber shall also be identified as the dispenser or pharmacy. A veterinarian may, but shall not be required to, submit to the PMP a record of reportable prescriptions dispensed by the veterinarian.

[ARC 4397C, IAB 4/10/19, effective 5/15/19; ARC 5545C, IAB 4/7/21, effective 5/12/21]

657—37.9(124) PMP reporting—pharmacies. Each pharmacy, unless exempt pursuant to rule 657—37.7(124), shall submit to the PMP either a record of each reportable prescription dispensed or administered during a reporting period pursuant to subrule 37.12(2) or a zero report pursuant to subrule 37.12(4), as appropriate.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.10 and 37.11 Reserved.

657—37.12(124) Reporting requirements.

37.12(1) Data elements. The information submitted to the PMP for each reportable prescription shall be accurate and shall include, at a minimum, the following data elements:

- a.* Dispenser DEA number.
- b.* Date the prescription is dispensed or administered.
- c.* Prescription number or unique identification number.
- d.* NDC number of the drug dispensed or administered.
- e.* Quantity of the drug dispensed or administered.
- f.* Number of days of drug therapy provided by the drug dispensed or administered.
- g.* Patient legal first and last names.
- h.* Patient address including street address, city, state, and ZIP code.
- i.* Patient phone number.
- j.* Patient date of birth.
- k.* Patient gender.
- l.* Prescriber name and DEA number.
- m.* Date the prescription was issued by the prescriber.
- n.* Method of payment.
- o.* Form of transmission of prescription origin.
- p.* Refill number.
- q.* Number of refills authorized.
- r.* Indication as to whether the prescription is new or a refill.

37.12(2) Reporting periods. A record of each reportable administration or prescription dispensed shall be submitted by each dispenser no later than the next business day following administration or dispensing.

37.12(3) *Transmission.* Prescription dispensing and administration information shall be transmitted via the PMP's current version of data upload or electronic submission.

37.12(4) *Zero reports.* If a pharmacy did not dispense or administer any reportable prescriptions during a reporting period, the dispenser shall submit a zero report no later than the next business day. [ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.13(124) Opioid antagonist administration by first responders.

37.13(1) The administration of an opioid antagonist by a first responder shall be reported to the PMP, unless such administration was reported to the Iowa department of public health bureau of emergency and trauma services.

37.13(2) The reporting of the administration of an opioid antagonist by a first responder shall include the following data elements:

- a. Patient first and last names.
- b. First and last names of the individual who administered the opioid antagonist.
- c. Date of administration.
- d. Quantity of the opioid antagonist administered.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.14 and 37.15 Reserved.

657—37.16(124) Access to PMP information. All information contained in the PMP is confidential and shall only be accessed as provided in this rule. All requests for PMP information must comply with the format specified by the board for the particular type of request. Once information is accessed, further dissemination or use of that information is governed by applicable federal and state laws governing the person who accessed the information. The board may charge a fee to recover the actual costs associated with responding to any request by a person other than a practitioner or a practitioner's delegate. Any fees or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

37.16(1) *Prescribers.* A prescriber may access a patient's prescription history report; the prescriber's activity report; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports. A veterinarian with authority to prescribe controlled substances may access a current patient's or client's prescription history report if the veterinarian has a reasonable basis to suspect the client may be abusing drugs or mistreating an animal.

37.16(2) *Pharmacists.*

a. A pharmacist may access a patient's or client's prescription history report; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports.

b. A pharmacist shall review a patient's or client's prescription history report prior to dispensing a Schedule V controlled substance without a prescription pursuant to rule 657—10.33(124,155A).

37.16(3) *Practitioner's delegates.* A practitioner's delegate may access a patient's prescription history report; proactive alerts or system user notes, such as peer-to-peer communication; and NarxCare reports.

37.16(4) *Licensing authority officials.*

a. A licensing authority with jurisdiction over a practitioner may obtain the following information, if the request is accompanied by a subpoena compelling disclosure of such information for a specific investigation into the prescribing or dispensing practices of the licensee: prescription history reports; proactive alerts or system user notes, such as peer-to-peer communication; PMP access logs and login records; and NarxCare reports.

b. A licensing authority with jurisdiction over a health care professional may obtain the following information, if the request is accompanied by a subpoena compelling disclosure of such information for a specific investigation into the licensee's misuse of controlled substances: the licensee's prescription history report.

37.16(5) *Law enforcement officials.* A law enforcement official may obtain a patient's prescription history report and the prescribing or dispensing practices of a prescriber if the request is accompanied

by a subpoena or other means of legal compulsion compelling disclosure of such information for use in a specific investigation.

37.16(6) *Medical examiners and medical examiner investigators.* A medical examiner or medical examiner investigator may obtain a decedent's prescription history report for use in a specific investigation.

37.16(7) *Patients.* A patient or the patient's agent may request the patient's own prescription history report by using the board's patient request form. The request can be personally delivered to the board office where the patient will be required to present current government-issued photo identification at the time of the delivery of the request. A patient who is unable to personally deliver the request to the board office may submit a notarized request, along with a certified copy of the patient's government-issued photo identification, via mail or commercial delivery service. The following agents may submit a request on behalf of a patient: an individual with a medical power of attorney for the patient, a patient's attorney, or an executor of the patient's estate. In addition to the patient's information, the patient's agent shall be identified by name, current address, and telephone number. In lieu of the patient's signature and identification, the patient's agent shall sign the request and the government-issued photo identification shall identify the patient's agent. The patient's agent shall include a copy of the legal document that establishes the agency relationship with the patient.

[ARC 4397C, IAB 4/10/19, effective 5/15/19; ARC 5545C, IAB 4/7/21, effective 5/12/21]

657—37.17(124) *Integrated systems.* A practitioner or a health care system may integrate its electronic health record system or a pharmacy may integrate its automated data processing system with the PMP using an application programming interface. Use of an integrated system shall comply with all of the following:

37.17(1) The integrated system shall log each user's access to PMP information. Access logs shall be retained by the practitioner, health care system, or pharmacy for a minimum of four years from the date of access and shall be provided to the board upon request.

37.17(2) If the user identified in access logs is not the practitioner, the integrated system shall clearly identify on which practitioner's behalf the user was accessing PMP information. A practitioner's delegate using an integrated system is required to maintain active PMP registration.

37.17(3) The integrated system shall maintain appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, or theft of PMP information and shall meet all HIPAA requirements for safeguarding protected health information.

37.17(4) The practitioner, health care system, or pharmacy shall notify the PMP administrator of any breach in the electronic health record system that may have included PMP information within 72 hours of making the determination that a breach occurred.

37.17(5) An integrated system shall comply with all requirements in subchapter VI of Iowa Code chapter 124 and all requirements of this chapter.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.18(124) *PMP administrator access.*

37.18(1) *PMP staff.* The board may designate PMP administrators who may access any PMP information needed to perform the functions of the job.

37.18(2) *Statistical data.* The PMP administrator or designee may provide summary, statistical, or aggregate data to public or private entities for statistical, public research, public policy, or educational purposes. The board may charge a fee to recover the actual costs associated with responding to a request for PMP data pursuant to this subrule. Any fees or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.19(124) *Prescriber activity reports.* The PMP administrator shall, at least annually, electronically issue to each prescriber who prescribed a controlled substance that was reported to the program as dispensed in or into this state during the preceding reporting period an activity report which shall include, at a minimum, the following:

1. A summary of the prescriber's history of prescribing controlled substances,
2. A comparison of the prescriber's history of prescribing controlled substances with the history of other prescribers of the same profession or specialty,
3. The prescriber's history of program use,
4. General patient risk factors, and
5. Educational updates.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.20(124) Proactive notifications. The PMP administrator shall provide notification to a practitioner when a patient may be practitioner shopping or at risk of abusing or misusing a controlled substance based on criteria and thresholds determined by the board and the advisory council. A proactive notification pursuant to this rule will be initiated when a patient obtains prescriptions for controlled substances from a minimum number of prescribing practitioners and from a minimum number of pharmacies within a maximum number of days which exceed the thresholds established by the board and advisory council. The notification will suggest review of the patient's prescription history.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.21(124) Record retention. The PMP shall retain all reported prescriptions, all records of access to or query of PMP information, and all information distributed to practitioners in proactive notifications for a minimum of four years from the date of the record.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.22(124) Information errors. Any person who believes that PMP information is erroneous shall notify the pharmacy or dispensing practitioner. Upon notification of a potential error in PMP information, the pharmacy or dispensing practitioner shall promptly correct erroneous information in the record.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

657—37.23(124) Discipline. Any licensee who fails to comply with the provisions of the law or these rules is subject to disciplinary action by the board and may be subject to criminal prosecution.

[ARC 4397C, IAB 4/10/19, effective 5/15/19]

These rules are intended to implement Iowa Code sections 124.550 to 124.558.

[Filed ARC 7903B (Notice ARC 7676B, IAB 4/8/09), IAB 7/1/09, effective 8/5/09]

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REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, chapter 1245.

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Rescinded **ARC 6398C**, IAB 7/13/22, effective 7/1/22

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Rescinded **ARC 6842C**, IAB 2/8/23, effective 3/15/23

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[Prior to 12/17/86, Revenue Department[730]]

Transferred to 701—Chapter 288, IAC Supplement 11/2/22

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[Prior to 12/17/86, Revenue Department[730]]

Rescinded **ARC 6508C**, IAB 9/7/22, effective 10/12/22

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[Prior to 12/17/86, Revenue Department[730]]

Transferred to 701—Chapter 284, IAC Supplement 11/2/22

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[Prior to 12/17/86, Revenue Department[730]]

Transferred to 701—Chapter 285, IAC Supplement 11/2/22

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[Prior to 12/17/86, Revenue Department[730]]

Rescinded **ARC 6842C**, IAB 2/8/23, effective 3/15/23

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CHALLENGES TO ADMINISTRATIVE LEVIES AND
PUBLICATION OF NAMES OF DEBTORS

[Prior to 11/2/22, see Revenue Department[701] Ch 154]

701—25.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the Iowa department of revenue.

“*Facility*” means the centralized debt collection facility of the department of revenue.

“*Financial institution*” includes a bank as defined in Iowa Code section 524.103, credit union as defined in Iowa Code section 533.51, or savings and loan as defined in Iowa Code section 534.102. “Financial institution” also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in Iowa Code section 502.102.

“*Obligor*” means a person who is indebted to the state of Iowa or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

“*Person*” means individual, corporation, business trust, estate trust, partnership, limited liability company or association, or any other legal entity, but does not include a state agency.

[Editorial change: IAC Supplement 11/2/22]

701—25.2(421) Administrative levies. The centralized debt collection facility may administratively initiate an action to seize one or more accounts in a financial institution of a person who has a delinquent account, charges, fees, loans, taxes, or other indebtedness owed to the state or being collected by the state. The facility initiates an administrative levy by notifying a financial institution of the name and social security number of the obligor, a statement that the obligor is believed to have an account at the financial institution, and a statement that the obligor’s account is subject to seizure and that the financial institution is authorized and required to forward moneys to the centralized collection facility. The notice must contain the maximum amount that shall be forwarded to the facility which cannot exceed the amount of the indebtedness.

The facility must notify an obligor of the administrative levy. The notice must contain the name and social security number of the obligor, a statement that the obligor is believed to have an account at the financial institution, a statement that the obligor’s account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility, the maximum amount to be forwarded to the facility, the time frames the financial institution must meet in forwarding any amounts, a statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor, and the address of the facility.

[Editorial change: IAC Supplement 11/2/22]

701—25.3(421) Challenges to administrative levies. A challenge to an administrative levy can only be made by an obligor or an account holder of interest. A challenge to an administrative levy will be reviewed by the centralized debt collection facility of the department. This review is not subject to the provisions of Iowa Code chapter 17A.

[Editorial change: IAC Supplement 11/2/22]

701—25.4(421) Form and time of challenge. The obligor or an account holder of interest must submit a written challenge to an administrative levy within ten days of the date of the notice. The written challenge shall be submitted to the individual identified as the contact for the facility.

[Editorial change: IAC Supplement 11/2/22]

701—25.5(421) Issues that may be raised.

25.5(1) The issues raised by the challenging party, which are limited to a mistake of fact, may include but are not limited to:

- a. The challenging party has the same name as the obligor but is not the correct person.
- b. The challenging party does not have an interest in the account that is being seized.

c. The amount listed in the notice to the obligor is greater than the amount actually owed.

25.5(2) The written challenge must be sent by electronic means, including email or online as indicated on the department's notice, or mailed to the central collections unit at the address found on the department's website at tax.iowa.gov/mailing-addresses with adequate postage.

[Editorial change: IAC Supplement 11/2/22; ARC 6872C, IAB 2/8/23, effective 3/15/23]

701—25.6(421) Review of challenge. Review of a challenge to an administrative levy shall be conducted by the facility within ten days of receipt of the written challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if available. Only a mistake of fact, including but not limited to, a mistake of identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

[Editorial change: IAC Supplement 11/2/22]

701—25.7(421) Actions where there is a mistake of fact. Actions to be taken if the facility determines that a mistake of fact has occurred:

1. If a mistake of identity has occurred or the obligor does not have a delinquent or accrued amount owed to or being collected by the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide the obligor with a copy of the notice by regular mail.

2. If the delinquent or accrued amount owed to or being collected by the state is less than the amount indicated in the notice of administrative levy, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

[Editorial change: IAC Supplement 11/2/22]

701—25.8(421) Action if there is not a mistake of fact. If the facility finds that no mistake of fact has occurred, the facility shall provide notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

[Editorial change: IAC Supplement 11/2/22]

701—25.9 to 25.15 Reserved.

701—25.16(421) List for publication. The director may compile and make available for publication a list of names, with last-known addresses and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in Iowa Code subsection 421.17(34). The director shall determine when to compile the list, but shall not be required to do so.

[Editorial change: IAC Supplement 11/2/22]

701—25.17(421) Names to be published. Names selected for release for publication shall be based on the records of the facility. The director may not include the names of persons who owe less than \$100 or the threshold amounts determined by the director. The threshold amounts may vary by the debt types being collected by the central collection facility. The director may withhold names from publication if in the director's opinion publication would not assist in the collection of the debt.

The director will not release for publication names of parties who have made arrangements with the facility to pay the outstanding debt and are current in liquidating the debt based on the arrangements made.

[Editorial change: IAC Supplement 11/2/22]

701—25.18(421) Release of information. The director may release the information, as the director deems necessary, as follows:

1. The director will issue a press release to the daily and weekly newspapers describing the manner in which a copy of the list of names for publication may be obtained. The director will make the list available in an electronic medium of the director's choice.

2. The director will release to credit reporting agencies the names selected for release for publication upon request. The names are to be released in the same electronic medium as the names are released to the press.

[Editorial change: IAC Supplement 11/2/22]

These rules are intended to implement Iowa Code sections 421.17 and 421.17A.

[Filed 3/8/96, Notice 1/31/96—published 3/27/96, effective 5/1/96]

[Editorial change: IAC Supplement 11/2/22]

[Filed ARC 6872C (Notice ARC 6748C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 102
ASSESSMENT PRACTICES AND EQUALIZATION

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 71]

701—102.1(405,427A,428,441,499B) Classification of real estate.

102.1(1) Responsibility of assessors. All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property under this rule, except as provided for in paragraph 71.1(4)“d.” An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building. A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify property according to its present use and not according to its highest and best use. See subrule 71.1(9) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 701—71.8(428,441).

102.1(2) Responsibility of boards of review, county auditors, and county treasurers. Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

102.1(3) Agricultural real estate.

a. Generally. Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph “a” or “b” of this subrule.

b. Vineyards. Beginning with valuations established on or after January 1, 2002, vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

c. Algae cultivation and production. Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production shall be classified as agricultural real estate if the real estate is an enclosed pond or land which contains a photobioreactor. Pursuant to 2013 Iowa Acts, House File 632, section 1, a photobioreactor is not attached to land upon which it sits and shall not be assessed and taxed as real property.

(1) Determining direct usage. To determine if real estate is used “directly” in the cultivation and production of algae, one must first ensure that the real estate is used to perform activities that cultivate and produce algae and is not used for activities that occur before or after the cultivation and production of algae. If the real estate is used to perform activities for the cultivation and production of algae, to be “directly” so used, the real estate must be used to perform activities that are integral and essential to the cultivation and production, as distinguished from activities that are incidental, merely convenient to, or remote from cultivation and production. The fact that real estate is used for activities that are essential or necessary to the cultivation and production of algae does not mean that the real estate is also “directly” used in production. Even if the real estate is used for activities that are essential or necessary

to the cultivation and production of algae, if the activities are far enough removed from the cultivation or production of algae, the real estate would not qualify for the agricultural designation.

(2) Examples. The following are nonexclusive examples of real estate which would not be directly used in the cultivation and production of algae:

1. Real estate that is used to store, assemble, or repair machinery and equipment that is used for cultivation and production of algae.
2. Real estate that is used in the management, administration, advertising, or selling of algae.
3. Real estate that is used in the management, administration, or planning of the cultivation and production of algae.
4. Real estate that is used for packaging of the algae which has been produced and cultivated.

102.1(4) Residential real estate.

a. Classification of residential real estate—in general. Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation containing fewer than three dwelling units, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. “Used in conjunction with” means that the structure or improvement is located on the same parcel, on contiguous parcels, or on a parcel directly across a street or alley as the building or structure containing the dwelling and when marketed for sale would be sold as a unit. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters, shall not be considered residential real estate. However, regardless of the number of separate living quarters, multiple housing cooperatives organized under Iowa Code chapter 499A and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

b. Horizontal property regimes. An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

c. Classification of residential real estate on or after January 1, 2022. Beginning with valuations established on or after January 1, 2022, residential real estate shall also include:

- (1) Property primarily used or intended for human habitation containing two or fewer dwelling units.
- (2) Mobile home parks.
- (3) Manufactured home communities.
- (4) Land-leased communities.
- (5) Assisted living facilities.
- (6) A parcel primarily used or intended for human habitation containing three or more separate dwelling units. If a portion of such a parcel is used or intended for a purpose that, if the primary use would be classified as commercial property or industrial property, each such portion, including a proportionate share of the land included in the parcel, if applicable, shall be assigned the appropriate classification pursuant to Iowa Code section 441.21(14)“b” and paragraph 71.1(4)“d” below.

(7) For a parcel that is primarily used or intended for use as commercial property or industrial property, that portion of the parcel that is used or intended for human habitation, regardless of the number of dwelling units contained on the parcel, including a proportionate share of the land included in the parcel, if applicable. The portion of such a parcel used or intended for use as commercial property or industrial property, including a proportionate share of the land included in the parcel, if applicable, shall be assigned the appropriate classification pursuant to Iowa Code section 441.21(14)“b” and paragraph 71.1(4)“d” below.

d. Dual classification.

(1) For assessment years beginning January 1, 2022, and after, valuations of parcels for which a portion of the parcel satisfies the requirements for classification as residential property under Iowa Code section 441.21(14)“a”(6) or 441.21(14)“a”(7) and subparagraph 71.1(4)“c”(6) or 71.1(4)“c”(7), the assessor shall assign to that portion of the parcel the classification of residential property and to such other portions of the parcel the property classification for which such other portions qualify.

(2) The only permitted combinations of dual classifications are commercial and residential or industrial and residential. The assessor shall assign the classification of residential to that portion of the parcel that satisfies the requirements for the classification of residential property and to such other portions of the parcel the property classification for which such other portions qualify. The assessor shall maintain the valuation and assessment of property with a dual classification on one parcel record.

e. Section 42 housing. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, and that has not been withdrawn from Section 42 assessment procedures under Iowa Code section 441.21(2), shall not be classified as residential property.

f. Short-term leases. A hotel, motel, inn, or other building where rooms or dwelling units are usually rented for less than one month shall not be classified as residential property.

g. Definitions. For purposes of this subrule, the following definitions apply:

“*Assisted living facility*” means property for providing assisted living as defined in Iowa Code section 231C.2. “*Assisted living facility*” also includes a health care facility as defined in Iowa Code section 135C.1, an elder group home as defined in Iowa Code section 231B.1, a child foster care facility under Iowa Code chapter 237, or property used for a hospice program as defined in Iowa Code section 135J.1.

“*Dwelling unit*” means an apartment, group of rooms, or single room which is occupied as separate living quarters or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building.

“*Land-leased community*” means the same as defined in Iowa Code sections 335.30A and 414.28A.

“*Manufactured home community*” means the same as a land-leased community.

“*Mobile home park*” means the same as defined in Iowa Code section 435.1.

102.1(5) Reserved.

102.1(6) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, and property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code and has not been withdrawn from Section 42 assessment procedures under Iowa Code section 441.21(2). Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)“j,” except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use as a commercial venture, other than leased for human habitation, shall be classified as commercial real estate. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

102.1(7) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the

product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(7)“a”(1). Property in which the performance of these activities is only incidental to the property’s primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises’ primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises’ primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo*, 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property’s primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property’s primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982).

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, “X” operates a factory which manufactures building materials for sale. In addition, “X” uses some of these building materials in construction contracts. The machinery which “X” would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963).

102.1(8) Point-of-sale equipment. As used in Iowa Code section 427A.1(1)“j,” the term “point-of-sale equipment” means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term “sale” means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

102.1(9) Housing development property.

a. Ordinances adopted or amended on or after January 1, 2011.

(1) Adoption of ordinance by board of supervisors. A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing on or after

January 1, 2011, shall continue to be assessed for taxation in the manner it was assessed prior to the acquisition. Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing or 5 years from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted or otherwise made effective under 2011 Iowa Code Supplement section 405.1(1) "a" to extend the 5-year time period for a period of time not to exceed 5 years beyond the end of the original 5-year period established under 2011 Iowa Code Supplement section 405.1(1). Thus, the maximum special assessment time for ordinances adopted on or subsequent to January 1, 2011, is 10 years. An extension of an ordinance under 2011 Iowa Code Supplement section 405.1(1) "a" may apply to all or a portion of the property that was subject to the original ordinance.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) "a," extending the county ordinance not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or subsequent to January 1, 2011, is 10 years if the city council amends an ordinance originally adopted by the county board of supervisors.

(4) Sale of lot; expiration of 5-year or extended period. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 5-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

(5) Definition of "subdivide." As used in both paragraphs 71.1(9) "a" and "b," "subdivide" means to divide a tract of land into three or more lots.

b. Ordinances adopted on or after January 1, 2004, but prior to January 1, 2011.

(1) Ordinances adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), to the extent such ordinances affect the assessment of property subdivided for development of housing on or after January 1, 2004, but before January 1, 2011, shall remain in effect or otherwise be made effective, and such ordinances:

1. Adopted under 2011 Iowa Code Supplement section 405.1(1), applicable to counties with a population of less than 20,000, shall be extended, from a period of 5 years, to apply to a period of 10 years from the date of subdivision.

2. Adopted under 2011 Iowa Code Supplement section 405.1(2), applicable to counties with a population of 20,000 or more, shall be extended, from a period of 3 years, to apply to a period of 8 years from the date of subdivision.

Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing, or 10 years pursuant to paragraph "1" above or 8 years pursuant to paragraph "2" above (or the extended period, if applicable) from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) or 405.1(2) to extend the 10- and 8-year periods, respectively, for a period of time not to exceed 5 years beyond the end of the 10- and 8-year periods established under 2011 Iowa Code Supplement section 405.1(1) "b." Thus, the maximum special assessment time for ordinances adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years. For counties with a population of 20,000 or more, the maximum shall be 13 years.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), extending the county ordinances not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum

time to appeal an ordinance adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years if the city council amends an ordinance originally adopted by the board of supervisors. For counties with a population of 20,000 or more, the maximum special assessment time shall be 13 years.

(4) Sale of lot. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 10- or 8-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

102.1(10) Assessment of platted lots.

a. When a subdivision plat is recorded pursuant to Iowa Code chapter 354 on or after January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 5 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

b. For subdivision plats recorded pursuant to Iowa Code chapter 354 (relating to division and subdivision of land) on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 8 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

c. 2011 Iowa Code Supplement section 441.72 does not apply to special assessment levies.

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4 and 441.22 and chapter 499B and Iowa Code Supplement section 441.21 as amended by 2002 Iowa Acts, House File 2584.

[ARC 8559B, IAB 3/10/10, effective 4/14/10; ARC 0400C, IAB 10/17/12, effective 11/21/12; ARC 1196C, IAB 11/27/13, effective 1/1/14; ARC 1765C, IAB 12/10/14, effective 1/14/15; ARC 2146C, IAB 9/16/15, effective 10/21/15; ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.2(421,428,441) Assessment and valuation of real estate.

102.2(1) Responsibility of assessor. The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

102.2(2) Responsibility of other assessing officials. Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 701—71.3(421,428,441) to 701—71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

[Editorial change: IAC Supplement 11/2/22]

701—102.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the Iowa Real Property Appraisal Manual and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(17).

102.3(1) Productivity.

a. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), the USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and distribute such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

b. In distributing such valuation to each parcel under paragraph 71.3(1) “a,” the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based upon the five-year average difference in cash rent between non-irrigated cropland and pasture land as published by NASS. The assessor may utilize the USDA FSA-published Common Land Unit digital data or other reliable sources in determining non-cropland. Counties shall implement the adjustments under this paragraph on or before the 2017 assessment year. The department of revenue may, in a case involving hardship, extend the implementation of the adjustments required under this paragraph to the 2019 assessment year. No extension of time shall be granted unless the county makes a written request to the department of revenue for such action.

c. A taxpayer may apply to the county for the adjustment to non-cropland under paragraph 71.3(1) “b” beginning with the 2014 assessment and until the county’s full implementation of this subrule. Upon application, and subsequent approval by the assessor, the county assessor shall adjust non-cropland as provided in paragraph 71.3(1) “b.” Once a taxpayer applies for the adjustment, and upon approval, the assessor shall make the adjustment to the assessment year for which the application was submitted and until the county’s full implementation of this subrule, without the need to reapply for the adjustment.

d. EXAMPLE. The following is an example of the calculation used to compute adjustment on land determined to be non-cropland with a CSR that is greater than 50 percent of the average CSR for cropland for the county:

Average county CSR rating for cropland	80 CSR
50% of average cropland CSR	40 CSR
Example of non-cropland soil 11b CSR rating	58 CSR
Non-cropland CSR points to be adjusted	$58 - 40 = 18$ CSR points
5-year average rent for non-irrigated cropland	\$163.60
5-year average rent for pasture land	\$48.30
Percent difference (rounded)	$1 - (\$48.30/\$163.60) = 70\%$
Apply the percent difference to points to be adjusted	$18 \text{ CSR points} \times (1 - .70) = 5.40$ adjusted CSR points
Adjusted CSR non-cropland	$40 + 5.40 = 45.40$ adjusted CSR points

102.3(2) Agricultural factor. In order to determine a productivity value for agricultural buildings and structures, assessors must make an agricultural adjustment to the market value of these buildings and structures by developing an “agricultural factor” for the assessors’ jurisdictions. The agricultural factor for each jurisdiction is the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor must be applied uniformly to all agricultural buildings and structures in the assessing jurisdiction. As an example, if a building’s actual value is \$500,000 and the agricultural factor is 30 percent, the productivity value of that building is \$150,000. See *H & R Partnership v. Davis County Board of Review*, 654 N.W.2d 521 (Iowa 2002). The 2007, 2008, and 2009 average of the market value of land will be used in determining the agricultural factor for assessment year 2011. A five-year market value average of land for years used to determine the productivity formula will be used to determine the agricultural factor for assessment year 2013 and subsequent assessment years.

102.3(3) Classification. Land classified as agricultural real estate includes the land beneath any dwelling and appurtenant structures located on that land and shall be valued by the assessor pursuant to rule 701—71.3(421,428,441). An assessor shall not value a part of the land as agricultural real estate and a part of the land as if it is residential real estate.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.
 [ARC 8542B, IAB 2/24/10, effective 3/31/10; ARC 9478B, IAB 4/20/11, effective 5/25/11; ARC 0770C, IAB 5/29/13, effective 7/3/13; ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.4(421,428,441) Valuation of residential real estate. Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(17) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.
[ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(17) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available. In cases involving the valuation of owner-occupied commercial property, the data relating to the financial performance of the owner or the owner's business, including but not limited to its sales, revenue, expenses, or profits, shall not be considered relevant in determining the property's actual value.

102.5(1) Property of long distance telephone companies. The director of revenue shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

102.5(2) Low-income housing subject to Section 42 of the Internal Revenue Code.

a. Productive and earning capacity. In assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code which limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.

b. Direct capitalization method. The income approach to valuation shall be applied using the direct capitalization method. The assessor may use the discounted cash flow method as a test of the reasonableness of the results produced by the direct capitalization method. The direct capitalization method of the income approach involves dividing the Net Operating Income (NOI) on a cash basis by an overall capitalization rate to derive an indication of the value of the property for the assessment year.

In applying the direct capitalization method, the assessor shall develop a normalized measure of annual NOI based on the productive and earning capacity of the development utilizing (1) the actual rent schedule applicable for each of the available units as of January 1 of the year of assessment indicating the actual rent to be paid by the resident plus any Section 8 rental assistance or other direct cash rental subsidy provided to the resident by federal, state or local rent subsidy programs as limited pursuant to Section 42 of the Internal Revenue Code, (2) a normal vacancy/collection allowance, (3) the prior year's actual and current year's projected annual operating expenses associated with the property, excluding noncash items such as depreciation and amortization, but including property taxes and those actual costs expected to be incurred and paid as required by Internal Revenue Code Section 42 regulations, provisions, and restrictions as applicable to the assessment year, and (4) an appropriate provision for replacement reserves.

If no separate line item is included for reserves for replacement in the historic income and expense data, then the maintenance and repair categories of the historic expense data must be itemized. For properties that have attained a normalized operating history, the NOI results of the prior three years (as represented in the statements variously named as the Income and Loss Statement, the Profit and Loss Statement, the Income Statement, the Actual to Budget Comparison Statement, Balance Sheet, or some name variation of these) may be used to provide the basis for determining the normalized NOI used for purposes of applying the direct capitalization method for the year of assessment, provided an appropriate replacement reserve is included in the NOI determination and provided any additional costs required as a result of Section 42 regulation or compliance changes for the assessment year are included

as an operating expense in the NOI determination. In addition, the assessor may utilize the current year operating budget to develop a measure of NOI for the assessment year. The assessor, in developing the measure of annual NOI on a cash basis, shall not consider as income any potential rental income differential that could otherwise be received from the property if the rents were not limited pursuant to Section 42 of the Internal Revenue Code, any tax credit equity, any tax credit value, or other subsidized financing.

c. Filing of reports. It shall be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary.

d. Capitalization rate. The overall capitalization rate to be used in applying the direct capitalization method for a Section 42 property is developed through the band-of-investment technique. The capitalization rate will be calculated annually by the Iowa department of revenue and distributed to all Iowa assessors by March 1. The capitalization rate is a composite rate weighted by the proportions of total property investment represented by debt and equity. The capital structure weights equity at 80 percent and debt at 20 percent unless actual market capital structure can be verified to the assessor. The yield, or market rate of return, for equity is calculated using the capital asset pricing model (CAPM). The yield for debt is equivalent to the average yield on 25-year Treasury bonds referred to as the Treasury long-term average rate. An example of the band-of-investment technique to be utilized is as follows:

	% to Total	Yield	Composite
Equity	80%	11.05%	8.84%
Debt	20%	5.94%	1.19%
	100%		10.03%

e. Capital asset pricing model. The capital asset pricing model (CAPM) is utilized to develop the equity rate. The formula is:

$$R_e = B(R_m - R_f) + R_f$$

Where:

- R_e = return on equity
- B = beta
- R_m = return on the market
- R_f = risk-free rate of return
- $R_m - R_f$ = market-risk premium

The beta is assumed to be 1 which indicates the risk level to be consistent with the market as a whole. The risk-free rate is calculated by finding the average of the three-month and six-month Treasury bill. The return on the market is calculated by taking the average of the return on the market for the Merrill Lynch Universe and Standard and Poor's 500 or by reference to other published secondary sources.

f. Properties under construction. For Section 42 properties under construction, the assessor may value the property by applying the percentage of completion to the replacement cost new (RCN) as calculated from the Iowa Real Property Appraisal Manual and adding the fair market value of the land. Alternatively, projected income and expense data may be utilized if available.

g. Negative or minimal NOI. If the Section 42 property shows a negative or minimal net operating income (NOI), the indicator of value as set forth in these rules shall not be utilized.

h. Eligibility withdrawn. The property owner shall notify the assessor when property is withdrawn from Section 42 eligibility under the Internal Revenue Code. The notification must be provided by March 1 of the assessment year or the owner is subject to a penalty of \$500.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 as amended by 2004 Iowa Acts, Senate File 2296, and 476.1D(10).

[ARC 3107C, IAB 6/7/17, effective 7/12/17; ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.6(421,428,441) Valuation of industrial land and buildings. Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(17), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

[ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.7(421,427A,428,441) Valuation of industrial machinery. Industrial machinery as referred to in Iowa Code section 427A.1(1) “e” shall include all machinery used in manufacturing establishments and shall be assessed as real estate even though such machinery might be assessed as personal property if not used in a manufacturing establishment.

In determining the actual value of industrial machinery assessed as real estate, the assessor shall give consideration to the “Industrial Machinery and Equipment Valuation Guide” issued by the department of revenue and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 427A.1, 428.4 and 441.21.

[Editorial change: IAC Supplement 11/2/22]

701—102.8(428,441) Abstract of assessment. Each city and county assessor shall submit annually to the department of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is in essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the department in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.9(428,441) Reconciliation report. The assessor’s report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the department in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.10(421) Assessment/sales ratio study.

102.10(1) Basic data. Basic data shall be that submitted to the department of revenue by county recorders and city and county assessors on forms prescribed and provided by the department, information furnished by parties to real estate transactions, and information obtained by field investigations made by the department of revenue.

102.10(2) Responsibility of recorders and assessors. County recorders and city and county assessors shall complete the prescribed forms as required by Iowa Code subsection 421.17(6) and rule 701—79.3(428A) in accordance with instructions issued by the department. Assessed values entered on the prescribed form shall be those established as of January 1 of the year in which the sale takes place.

102.10(3) Normal sales. All real estate transfers shall be considered by the department of revenue to be normal sales unless there exists definite information which would indicate the transfer was not an arms-length transaction or is of an excludable nature as provided in Iowa Code section 441.21.

This rule is intended to implement Iowa Code section 421.17.

[Editorial change: IAC Supplement 11/2/22]

701—102.11(441) Equalization of assessments by class of property.

102.11(1) Commencing in 1977 and every two years thereafter, the department of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 701—71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report that is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the department determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the department pursuant to rule 701—71.12(441). Equalization orders of the department shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

102.11(2) Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities that are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.12(441) Determination of aggregate actual values.

102.12(1) Agricultural real estate.

a. Use of income capitalization study. The equalized valuation of agricultural realty shall be based upon its productivity and net earning capacity and shall be determined in accordance with the provisions of this subrule. Data used shall pertain to crops harvested during the five-year period ending with the calendar year in which assessments were last equalized. The equalized valuation of agricultural realty shall be determined for each county as follows:

(1) Computation of county acres. This information shall be obtained from the USDA National Agricultural Statistics Service.

1. Total acres in farms: Total acreage used for agricultural purposes.
2. Corn acres: Sum of corn acres harvested including silage, popcorn and acres planted for sorghum.
3. Oats and wheat acres: Sum of oats and wheat acres harvested.
4. Soybean acres: Soybean acres harvested.
5. Hay acres: All hay acres harvested.
6. Pasture acres: All pasture acres. Total pasture acres shall be determined by multiplying the total acres in farms reported by the USDA National Agricultural Statistics Service by the percentage which total pasture land as reported in the most recent U.S. Census of Agriculture bears to the total acreage in farmland also reported in the most recent U.S. Census of Agriculture. The amount of tillable and nontillable pasture acres shall be determined as follows:

1.	From the most recent U.S. Census of Agriculture obtain the following:		
	Cropland used only for pasture and grazing	_____	acres
	Woodland pasture	_____	acres
	Pasture land and rangeland (other than cropland and woodland pasture)	_____	acres
	TOTAL PASTURE LAND (total of above):	_____	acres
2.	Determine what percentage of the total pasture land is cropland used only for pasture:	_____	%
3.	Apply the percentage in "2" above to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land.	_____	acres

7. Government programs: Determine the 5-year average acres participating in applicable government programs. Obtain data from the USDA Farm Service Agency, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

8. Other acres: The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

(2) Computation of county yields. This information shall be obtained for each county from the USDA National Agricultural Statistics Service.

1. Corn yield (including silage): Number of bushels of corn harvested for grain per acre.
2. Oat yield (including wheat): Number of bushels of oats harvested per acre.
3. Soybean yield: Number of bushels per acre harvested.
4. Hay yield in tons: Number of tons per acre harvested.

(3) Computation of county gross income.

1. Corn: One-half of the 5-year average production multiplied by the 5-year average price received for corn.

2. Silage: One-half of the 5-year average number of acres devoted to the production of silage multiplied by the 5-year average production per acre for corn. The amount of production so determined shall be added to the 5-year average production for corn and included in the determination of the gross income for corn.

3. Soybeans: One-half of the 5-year average production multiplied by the 5-year average price received.

4. Oats: One-half of the 5-year average production of oats and wheat multiplied by the 5-year average price received for oats.

5. Price adjustment: For corn, soybeans, hay, and oats, the prices used shall be as obtained from the USDA National Agricultural Statistics Service and shall be adjusted to reflect any individual county price conditions prior to the 2007 crop year. For the 2007 crop year and later, the USDA National Agricultural Statistics Service district prices shall be used and shall be adjusted to reflect any individual county price conditions.

6. Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the USDA Farm Service Agency.

7. Hay: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to hay by the product obtained by multiplying one-fourth of the 5-year average hay yield by the 5-year average price received for all types of hay.

8. Tillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to tillable pasture by the product obtained in “hay” above.

9. Nontillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to nontillable pasture by one-half the product obtained in “hay” above.

10. Other acres: Income shall be the product of the number of other acres multiplied by 17 percent of the net income per acre for all other land uses.

(4) Computation of county production costs. The following data and procedures shall be used to determine specific county production costs.

1. Basic average landlord production costs. Landlord production costs for corn, soybeans, oats, diverted acres, hay, tillable pasture, nontillable pasture, fertilizer costs, and facilities’ costs shall be obtained for each year from Iowa State University.

2. Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities’ costs. If a county’s yield exceeds the state yield, production costs are increased by this amount. If a county’s yield is less than the state yield, production costs are reduced by this amount.

3. Fertilizer cost adjustment. The adjustment for fertilizer costs is determined as follows: Multiply the difference between the 5-year state average corn yield per acre and the 5-year county average corn yield per acre obtained from the USDA National Agricultural Statistics Service by the fertilizer cost amount per bushel determined by dividing the statewide average cost of landlord’s share of fertilizer cost per acre from Iowa State University by the statewide average corn yield per acre to produce the corn fertilizer cost per bushel adjustment. This amount is then multiplied by the 5-year county average corn acres determined in (2) above.

4. Expense adjustments. If a county’s 5-year average corn yield is greater than the state 5-year average corn yield, this amount is allowed as an additional expense. If the county’s average is less than the state average, this amount is an expense reduction.

5. Liability insurance cost adjustment. The 5-year average per acre cost of obtaining tort liability insurance shall be determined.

(5) Computation of county net income. From the total gross income, subtract the total expenses. Divide the resulting total by the total number of acres.

(6) Computation of dwelling adjustment factor. The amount determined in (5) above shall be reduced by 10.6 percent.

(7) Computation of county tax adjustment. Subtract the 5-year average per acre real estate taxes levied for land and structures including drainage and levee district taxes but excluding those levied against agricultural dwellings from the amount determined in (6) above. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit.

(8) Calculation of county valuation per acre. Divide the net income per acre ((7) above) for each county as determined above by the capitalization rate specified in Iowa Code section 441.21. The quotient shall be the actual per acre equalized valuation of agricultural land and structures for the current equalization year.

b. Use of other relevant data. The department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department, to determine the level of assessment of agricultural real estate.

c. Determination of value. The aggregate actual value of agricultural real estate in each county shall be determined by multiplying the equalized per acre value by the number of acres of agricultural real estate reported on the abstract of assessment for the current year, adjusted where necessary by the results of any field investigations conducted by the department of revenue and any other relevant data available.

102.12(2) Residential real estate outside and within incorporated cities.

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors that resulted in the determination that the sales were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The department of revenue may also supplement the assessment/sales ratio study with appraisals made by department appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The department may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department, to determine the level of assessment of residential real estate.

c. Equalization appraisal selection procedures for residential real estate. Residential properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser assigned to the jurisdiction shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 1,397 improved residential units. Dividing 1,397 by 10, 139.7 is arrived at, which is rounded down to 139. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 139 is to be selected. The person randomly selected number 20.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 20 and adding the interval number of 139 to it, each resulting number provides the following systematic sequence: 20, 159, 298, 437, 576, 715, 854, 993, 1,132, 1,271.

(2) Number of improved properties.

County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers
Franklin Twp.	57	1-57
Pleasant View	160	58-217
Jackson Twp.	56	218-273
Johnston	300	274-573
Polk Twp.	110	574-683
Washington Twp.	114	684-797
Maryville	306	798-1103
Camden Twp.	110	1104-1213
Salem	184	1214-1397
Total	<u>1,397</u>	

(3) Determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	57	1-57	20	20
Pleasant View	160	58-217	159	102
Jackson Twp.	56	218-273		
Johnston	300	274-573	298,437	25,164
Polk Twp.	110	574-683	576	3
Washington Twp.	114	684-797	715	32
Maryville	306	798-1103	854,993	57,196
Camden Twp.	110	1104-1213	1132	29
Salem	184	1214-1397	1271	58
Total	<u>1,397</u>			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 20. Since the improved residential properties in Franklin Township have been assigned code numbers 1 to 57, sequence number 20 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the twentieth improved residential entry.

Document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

- Current year sale
- Partial assessment
- Prior equalization appraisal
- Tax-exempt
- Value established by court action
- Value is not more than \$10,000
- Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 20 is ineligible, use code number 21 as a substitute. If code number 21 is ineligible, use code number 22, etc., until an eligible property is found.

If the procedure described in 71.12(2)“c”(3)“3” moves the substitute property to another city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(2)“c”(3)“3” even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(2)“c”(3)“2.” Alternate properties are selected by using the same procedure described in 71.12(2)“c”(3)“3.”

5. Follow procedures 71.12(2)“c”(3), items “1” to “4,” for each of the other originally selected sequence numbers.

102.12(3) Reserved.

102.12(4) *Commercial real estate.*

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors that resulted in the determination that the sales were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The department of revenue may also supplement the assessment/sales ratio study with appraisals made by department appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years are used, consideration shall be given for any subsequent changes in either assessed value or market value. Properties receiving a dual classification with the primary use being commercial shall be included.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The department of revenue may also consider other relevant data and statistical measures, including field investigations conducted by representatives of the department, to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

c. Equalization appraisal selection procedures for commercial real estate. Commercial properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the manner outlined below. Properties receiving a dual classification with the primary use being commercial shall be included.

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 397 improved commercial units. Dividing 397 by 10, 39.7 is arrived at, which is rounded down to 39. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 39 is to be selected. The person randomly selected number 2.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 2 and adding the interval number of 39 to it, each resulting number provides the following systematic sequence: 2, 41, 80, 119, 158, 197, 236, 275, 314, 353.

(2) Number of improved properties.

1. City jurisdictions—Utilizing the assessment book or a computer printout which follows the same order as the assessment book, consecutively number all the improved units and document the procedure.

2. County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers
Franklin Twp.	4	1-4
Pleasant View	60	5-64
Jackson Twp.	9	65-73
Johnston	100	74-173
Polk Twp.	10	174-183
Washington Twp.	14	184-197
Maryville	106	198-303
Camden Twp.	10	304-313
Salem	84	314-397
Total	<u>397</u>	

(3) The department appraiser shall determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	4	1-4	2	2
Pleasant View	60	5-64	41	37
Jackson Twp.	9	65-73		
Johnston	100	74-173	80,119,158	7,46,85
Polk Twp.	10	174-183		
Washington Twp.	14	184-197	197	14
Maryville	106	198-303	236,275	39,78
Camden Twp.	10	304-313		
Salem	84	314-397	314,353	1,40
Total	<u>397</u>			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 2. Since the improved commercial properties in Franklin Township have been assigned code numbers 1 to 4, sequence number 2 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the second improved commercial entry.

The department appraiser shall document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building

Current-year sale

Partial assessment

Prior equalization appraisal

Tax-exempt

Only one portion of a total property unit (example—a parking lot of a grocery store)

Value established by court action

Value is not more than \$10,000

Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(4) "c"(3)"3" moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(4) "c"(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(4) "c"(3)"2." Alternate properties are selected by using the same procedure described in 71.12(4) "c"(3)"3."

5. Follow procedures 71.12(4) "c"(3), items "1" to "4," for each of the other originally selected sequence numbers.

102.12(5) Industrial real estate. It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an

assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the department may correct any errors in such assessments that are brought to the attention of the department, including errors related to property with a dual classification if the primary use of the property is from the industrial portions.

102.12(6) Centrally assessed property. Property assessed by the department of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the department in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the department pursuant to rule 701—71.11(441).

102.12(7) Miscellaneous real estate. Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the department of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the department may correct any errors in assessments which are brought to the attention of the department.

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.
[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 9478B, IAB 4/20/11, effective 5/25/11; ARC 1765C, IAB 12/10/14, effective 1/14/15; ARC 2657C, IAB 8/3/16, effective 9/7/16; ARC 4170C, IAB 12/5/18, effective 1/9/19; ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.13(441) Tentative equalization notices. Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed percentage adjustments to the aggregate valuations of classes of property as set forth in rule 701—71.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days' notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.
[Editorial change: IAC Supplement 11/2/22]

701—102.14(441) Hearings before the department.

102.14(1) Protests. Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the department of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the department, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the department in reviewing the protests. Protests and hearings on tentative equalization notices before the department are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

102.14(2) Conduct of hearing. The department shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The division administrator for the property tax division shall act as the department's representative. The department's representative shall preside at the hearing, which shall be held at the time and place designated by the department or such other time and place as may be mutually agreed upon by the department and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.
[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.15(441) Final equalization order and appeals.

102.15(1) *Issuance of final equalization order.* After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the department of revenue shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

102.15(2) *Appeal of final equalization order.* The city or county officials of the affected county or assessing jurisdiction may appeal a final equalization order to the director of revenue by filing a notice of appeal with the clerk of the hearings section of the department of revenue. The notice of appeal must be filed or postmarked not later than ten days after the date the final equalization order is issued.

a. Form of appeal. The notice of appeal shall be in writing and in the same format as provided in 701—subrule 7.8(6).

(1) The notice of appeal shall substantially state in separate numbered paragraphs the following:

1. The county or assessing jurisdiction;
2. The date on which the final equalization order was issued;
3. The portion of the equalization order being appealed;
4. A clear and concise assignment of each and every error;
5. A clear and concise statement of the facts upon which the affected county or assessing jurisdiction relies as sustaining the assignment of error;
6. The relief requested;
7. The signature of the city or county officials bringing the appeal, or their representative, along with the address to which all subsequent correspondence, notice or papers shall be served or mailed.

(2) A county or assessing jurisdiction may amend its notice of appeal at any time prior to the commencement of the evidentiary hearing. The department may request that the county or assessing jurisdiction amend the notice of appeal for clarification.

b. Filing of notice of appeal. The notice of appeal must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 14457, Des Moines, Iowa 50319, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a notice of appeal is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a notice of appeal, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

c. Answer. The department of revenue shall file an answer with the clerk of the hearings section within 30 days after the filing of the pleading responded to, unless attacked by motion as provided in 701—subrule 7.17(5), and then the answer shall be filed within 30 days after the date on which the fact finder issues a ruling on the motion. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

d. Docketing. Appeals shall be assigned a docket number as provided in rule 701—7.10(17A). Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the clerk of the hearings section. The records of each case shall also include each action and each act done, with the proper dates as follows:

- (1) The title of the appeal;
- (2) Brief statement of the date of the final equalization order, the property tax classification affected, and the relief sought;
- (3) The manner and time of service of notice of appeal;
- (4) The appearance of all parties;
- (5) Notice of hearing, together with manner and time of service; and

(6) The decision of the director or administrative law judge or other disposition of the case and the date.

e. Hearing. Rules 701—7.14(17A) through 701—7.22(17A) shall apply to any hearing or proceeding regarding the appeal of a final equalization order to the director of revenue.

This rule is intended to implement Iowa Code chapter 17A and sections 441.48 and 441.49.
[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.16(441) Alternative method of implementing equalization orders.

102.16(1) Application for permission to use an alternative method.

a. A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the department of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

(1) Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

(2) The exact methods to be employed in implementing the requested alternative method for each class of property.

(3) The specific method of notifying affected property owners of the valuation changes.

(4) Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the department's final equalization order.

b. The department of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the department's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

102.16(2) Implementation of alternative method. If an alternative method is approved by the department of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

102.16(3) Appeal by property owners. If an alternative method is approved by the department of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.
[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.17(441) Special session of boards of review.

102.17(1) Grounds for protest. The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the department's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

102.17(2) Authority of board of review. When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the department of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the department's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

102.17(3) Report of board of review. In the report to the department of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation

adjustments by class of property as well as all other information required by the department of revenue to determine if such actions may have substantially altered the equalization order.

102.17(4) Meetings of board of review. If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.
[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.18(441) Judgment of assessors and local boards of review. Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.

This rule is intended to implement Iowa Code sections 441.17 and 441.35.
[Editorial change: IAC Supplement 11/2/22]

701—102.19(441) Conference boards.

102.19(1) Establishment and abolition of office.

a. As referred to in Iowa Code section 441.1, the term “federal census” includes any special census conducted by the Bureau of the Census of the U.S. Department of Commerce as well as the Bureau’s decennial census.

b. Within 60 days of receiving the certified results of a federal census indicating the population of a city having its own assessor has fallen below 10,000, the city council of the city shall repeal the ordinance providing for its own assessor.

c. Whenever the office of city assessor is abolished, all moneys in the assessment expense fund and the special appraiser fund shall be transferred to the appropriate accounts in the county assessor’s office, and all equipment and supplies shall be transferred to the county assessor’s office. Employees of the city assessor’s office may, at the discretion of the county assessor, become employees of the county assessor. However, any deputy assessor of the city may not be appointed a deputy county assessor unless certified as eligible for appointment pursuant to Iowa Code sections 441.5 and 441.10.

102.19(2) Membership.

a. County conference boards. A county conference board consists of the county board of supervisors, the mayor of each incorporated city in the county whose property is assessed by the county assessor, and one member of the board of directors of each high school district in the county, provided the member is a resident of the county. Members representing school districts serve one-year terms, and the board of directors each year must notify the clerk of the conference board of its representative on the conference board. A member of the board of directors of a school district may serve on the county conference board even though the member lives in a city having its own assessor (1978 O.A.G. 466).

b. City conference boards. A city conference board consists of the county board of supervisors, the city council, and the entire board of directors of each school district whose property is assessed by the city assessor.

102.19(3) Voting.

a. Votes on matters before a conference board shall be by units as provided in Iowa Code section 441.2. At least two members of each voting unit must be present in order for the unit to cast a vote (1960 O.A.G. 226). In the event the vote of the members of a voting unit ends in a tie, that unit shall not cast a vote on the particular matter before the conference board.

b. If a member of a conference board is absent from a meeting, the member’s vote may not be cast by another person, except that a mayor pro tem as provided in Iowa Code section 372.14(3) may vote for the mayor when the mayor is absent from or unable to perform official duties.

This rule is intended to implement Iowa Code section 441.2.
[Editorial change: IAC Supplement 11/2/22]

701—102.20(441) Board of review.**102.20(1) Membership.**

a. Occupation of members. One member of the county board of review must be actively engaged in farming as that member's primary occupation. However, it is not necessary for a board of review to have as a member one licensed real estate broker and one licensed architect or person experienced in the building and construction field if the person cannot be located after a good-faith effort to do so has been made by the conference board (1966 O.A.G. 416). In determining eligibility for membership on a board of review, a retired person is not considered to be employed in the occupation pursued prior to retirement, unless that person remains in reasonable contact with the former occupation, including some participation in matters associated with that occupation.

b. Residency of members. A person must be a resident of the assessor jurisdiction served to qualify for appointment as a member of the board of review. However, a member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

c. Term of office. The term of office of members of boards of review shall be for six years and shall be staggered as provided in Iowa Code section 441.31. In the event of the death, resignation, or removal from office of a member of a board of review, the conference board or city council shall appoint a successor to serve the unexpired term of the previous incumbent.

d. Membership on other boards. A member of a board of review shall not at the same time serve on either the conference board or the examining board, or be an employee of the assessor's office (1948 O.A.G. 120, 1960 O.A.G. 226).

e. Number of members. A conference board or city council may at any time change the composition of a board of review to either three or five members. To reduce membership from five members to three members, the conference board or city council shall not appoint successors to fill the next two vacancies which occur (1970 O.A.G. 342). To increase membership from three members to five members, the conference board or city council shall appoint two additional members whose initial terms shall expire at such times so that no two board members' terms expire at the end of the same year. Also, the conference board or city council may increase the membership of the board of review by an additional two members if it determines that a large number of protests warrant the emergency appointments. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The terms of the emergency members will not exceed two years.

f. Removal from office. A member of a board of review may be removed from office by the conference board or city council but only after specific charges have been filed by the conference board or city council.

g. Appointment of members. Members of a county board of review shall be appointed by the county conference board. Members of a city board of review shall be appointed by the city conference board in cities with an assessor or by the city council in cities without an assessor. A city without an assessor can only have a board of review if the population of the city is 75,000 or more. A city with a population of more than 125,000 may appoint a city board of review or request the county conference board to appoint a ten-member county board of review.

102.20(2) Sessions of boards of review.

a. It is mandatory that a board of review convene on May 1 and adjourn no later than May 31 of each year. However, if either date falls on a Saturday, Sunday, or legal holiday, the board of review shall convene or adjourn on the following Monday.

b. Extended session. If a board of review determines it will be unable to complete its work by May 31, it may request that the director of revenue extend its session up to July 15. The request must be signed by a majority of the membership of the board of review and must contain the reasons the board of review cannot complete its work by May 31. During the extended session, a board of review may perform the same functions as during its regular session unless specifically limited by the director of revenue.

c. Special session. If a board of review is reconvened by the director of revenue pursuant to Iowa Code section 421.17, the board of review shall perform those functions specified in the order of the director of revenue and shall perform no other functions.

102.20(3) Actions initiated by boards of review.

a. Internal equalization of assessments. A board of review in reassessment years as provided in Iowa Code section 428.4 has the power to equalize individual assessments as established by the assessor, but cannot make percentage adjustments in the aggregate valuations of classes of property (1966 O.A.G. 416). In nonreassessment years, a board of review can adjust the valuation of an entire class of property by adjusting all assessment by a uniform percentage. Nothing contained in this rule shall restrict the director from exercising the responsibilities set forth in Iowa Code section 421.17.

b. Omitted assessments. A board of review may assess for taxation any property which was not assessed by the assessor, including property which the assessor determines erroneously is not subject to taxation by virtue of enjoying an exempt status (*Talley v. Brown*, 146 Iowa 360, 125 N.W. 248 (1910)).

c. Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board's action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review shall meet to take final action on the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers shall be provided by newspaper publication as described in Iowa Code section 441.35 and in the manner specified in Iowa Code section 441.36.

102.20(4) Appeals to boards of review.

a. Jurisdiction. A board of review may act only upon written protests which have been filed with the board of review in compliance with Iowa Code section 441.37(1) "a."

(1) Protests must be filed between April 2 and April 30, inclusive. In the event April 30 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by April 30 or the following Monday if April 30 falls on a Saturday or Sunday shall also be considered to have been timely filed.

(2) The protest must identify one or more grounds for protest under Iowa Code section 441.37.

(3) All protests must be in writing, on forms prescribed by the director of revenue, and signed by the protester or the protester's authorized agent. A protest shall not be rejected for the sole reason that the protest was not filed using the prescribed form if the protest otherwise complies with Iowa Code section 441.37(1) "a." A written request for an oral hearing must be made at the time of filing the protest. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings be held consecutively.

(4) A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same taxing district. If this ground is a basis for the protest, the protester may identify comparable properties to support the claim. In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property, consider any comparable properties, and determine whether the evidence demonstrates the subject property is inequitably assessed.

(2) The property is assessed at more than the value authorized by law. If this ground is the basis for a protest, the protester may indicate the amount considered to be the actual value of the property.

(3) The property is not assessable, is exempt from taxes, or is misclassified. If this ground is the basis for a protest, the protester may indicate why the property is exempt, misclassified, or not assessable.

(4) There is an error in the assessment. An error may include, but is not limited to, listing errors, assessment of subject property for less than authorized by law, or erroneous mathematical calculations. If this ground is the basis for a protest, the protester must indicate the alleged error.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud or misconduct in the assessment. If this ground of protest is used, the protester must state the specific fraud or misconduct alleged, and the board of review must first determine if there is validity to the protester's allegation. If it is determined that there is fraud in the assessment or that there has been misconduct by the assessor, the board of review shall take action to correct the assessment and report the matter to the director of revenue. For purposes of this subrule, "misconduct" means the same as defined in 2017 Iowa Code section 441.9.

(6) Protests may be filed for previous years if the protester discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged.

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The decision shall be mailed no later than three days after the board of review's adjournment. The notice shall contain the following information:

- (1) The valuation and classification of the property as determined by the board of review.
- (2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.
- (3) The specific reasons for the board's decision with respect to the protest.
- (4) That the board of review's decision may be appealed to either the property assessment appeal board or district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31.

1. Appeal to property assessment appeal board. An appeal from the board of review to the property assessment appeal board may be made pursuant to the provisions of Iowa Code section 441.37A and rule 701—126.1(421,441).

2. Appeal to district court. An appeal from the board of review to the district court may be made pursuant to the provisions of Iowa Code section 441.38. The appeal shall be filed in the county where the property is located. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

This rule is intended to implement Iowa Code sections 441.31 to 441.37 and Iowa Code Supplement section 441.38 as amended by 2006 Iowa Acts, House File 2794.

[ARC 2707C, IAB 9/14/16, effective 10/19/16; ARC 3312C, IAB 9/13/17, effective 10/18/17; ARC 3771C, IAB 4/25/18, effective 5/30/18; Editorial change: IAC Supplement 11/2/22]

701—102.21(421,17A) Property assessment appeal board. Rescinded ARC 6858C, IAB 2/8/23, effective 3/15/23.

701—102.22(428,441) Assessors.

102.22(1) Conflict of interest. An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

102.22(2) Listing of property.

a. Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue.

b. Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to

be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

c. Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

d. Buildings erected or improvements made by a person other than the owner of the land on which they are located are to be assessed to the owner of the buildings or improvements. Unpaid taxes are a lien on the buildings or improvements and not a lien on the land on which they are located.

102.22(3) Notice of protest. If a protest or appeal is filed with the board of review, property assessment appeal board, or district court against the assessment of property valued at \$5 million or more, the assessor shall provide notice to the school district in which the property is located within ten days of the filing of the protest or the appeal, as applicable.

This rule is intended to implement Iowa Code chapter 428 and Iowa Code chapter 441 as amended by 2006 Iowa Acts, House File 2797.

[Editorial change: IAC Supplement 11/2/22]

701—102.23 Reserved.

701—102.24(421,428,441) Valuation of dual classification property. Real estate with a dual classification of commercial/residential or industrial/residential shall be assessed at its actual value as defined in Iowa Code section 441.21.

102.24(1) Allocation of dual classification values. The assessor shall value as a whole properties that have portions classified as residential and portions classified as commercial or industrial. After the assessor has assigned a value to the property, the value shall be allocated between the two classes of property based on the appropriate appraisal methodology. The assessor shall allocate land value proportionately by class.

102.24(2) Notice of valuation. The valuation notice issued pursuant to Iowa Code section 441.23 shall include a breakdown of the valuation by class for the current year and the prior year.

102.24(3) Protest of assessment. The valuation and assessment of property with a dual classification shall be considered one assessment, and any protest of assessment brought under Iowa Code section 441.37 or subsequent appeal must be made on the entire assessment. Protests of assessments on the valuation of only one class of property are not permitted. The board of review shall review the valuation in total as both classifications are subject to the board's adjustment in any review proceeding. Likewise, any tribunal or court reviewing the board's decision shall base its review on the entire assessment.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21 as amended by 2013 Iowa Acts, Senate File 295.

[ARC 1765C, IAB 12/10/14, effective 1/14/15; ARC 6096C, IAB 12/15/21, effective 1/19/22; Editorial change: IAC Supplement 11/2/22]

701—102.25(441,443) Omitted assessments.

102.25(1) Property subject to omitted assessment.

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu*, 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown*, 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.

102.25(2) Officials authorized to make an omitted assessment.

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu*, 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within two years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1999 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 2000. Thus, the county treasurer may make an omitted assessment for the 1999 assessment year at any time on or before June 30, 2002. The county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu*, 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

d. Department of revenue. The department of revenue may make an omitted assessment of any property assessable by the department at any time within two years from the date the assessment should have been made.

This rule is intended to implement Iowa Code chapter 440 and sections 443.6 through 443.15 as amended by 1999 Iowa Acts, chapter 174.

[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.26(441) Assessor compliance.

102.26(1) The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

102.26(2) If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

102.26(3) The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. The director's decision is subject to judicial review in accordance with Iowa Code chapter 17A. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

102.26(4) The plan of action shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan shall contain the

signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

102.26(5) By January 1 of the assessment year following the calendar year in which the plan of action was submitted to the department, the conference board shall submit a report to the department verifying that the plan was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the department determines that the assessor is in compliance.

102.26(6) If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the director of revenue under 701—Chapter 7.

This rule is intended to implement Iowa Code section 441.21.

[ARC 2657C, IAB 8/3/16, effective 9/7/16; Editorial change: IAC Supplement 11/2/22]

701—102.27(441) Assessor shall not assess own property.

102.27(1) *Assessor and deputy assessor prohibited from assessing own property.* An assessor or deputy assessor shall not personally assess a property if the assessor or deputy assessor owns the property, has a financial interest in the property, or has a financial interest in the entity that owns the property. The assessing jurisdiction shall pay all costs and expenses associated with the assessment of the above property.

102.27(2) *Certification to the department.*

a. Not later than January 1 of each year, assessors shall certify to the director that the assessor did not personally assess the following property in the previous assessment year:

- (1) Property owned by the assessor;
- (2) Property in which the assessor has a financial interest;
- (3) Property owned by an entity in which the assessor has a financial interest.

b. Not later than January 1 of each year, deputy assessors shall certify to the director that the deputy assessor did not personally assess the following property in the previous assessment year:

- (1) Property owned by the deputy assessor;
- (2) Property in which the deputy assessor has a financial interest;
- (3) Property owned by an entity in which the deputy assessor has a financial interest.

c. Assessors and deputy assessors shall use forms and procedures prescribed and provided by the director for the certifications described in paragraphs 71.27(2) “a” and “b.”

102.27(3) *Powers and duties of director.* The director shall have and assume all of the powers and duties under Iowa Code section 421.17 in administering this rule.

102.27(4) *Definitions.* For purposes of this rule, the following definitions shall govern.

“*Financial interest*” includes but is not limited to the holding of legal title to real property or any ownership interest in an entity that holds legal title to real property. Notwithstanding the preceding sentence, ownership interest in an entity shall not be deemed a “financial interest” when a person’s ownership interest equals less than 10 percent of the entity’s total ownership interest.

“*Personally assess*” means engaging in the listing, valuation, and classification of real property.

This rule is intended to implement Iowa Code section 441.17.

[ARC 5288C, IAB 11/18/20, effective 12/23/20; ARC 6025C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22]

701—102.28(441) Special counsel.

102.28(1) Before the conference board may employ special counsel to assist the city legal department or county attorney under Iowa Code section 441.41, the city legal department in the case of cities having an assessor, or county attorney in the case of counties, shall first provide written approval

of the employment of special counsel for each matter in which the special counsel will be employed on a case-by-case basis.

102.28(2) In the event special counsel is employed, the assessor shall provide the department with written notice of said employment, including the matter being litigated, justification for the hiring of special counsel, and the special counsel's name and hourly rate, within ten days of the hiring. In the event that special counsel has been employed by the conference board as of December 23, 2020, the assessor shall provide the department with written notification of said employment, including the matter being litigated, justification for the hiring of special counsel, and the special counsel's name and hourly rate, within ten days of December 23, 2020, for each case. On or before January 1 of each year, the assessor shall submit to the director, on forms prescribed by the director, a report of all matters litigated by special counsel in the previous 12-month period and the cost of said litigation for each case.

This rule is intended to implement Iowa Code section 441.41 as amended by 2020 Iowa Acts, House File 2641.

[ARC 5288C, IAB 11/18/20, effective 12/23/20; Editorial change: IAC Supplement 11/2/22]

701—102.29(441) Application of two-tier assessment limitation.

102.29(1) Following receipt of the certification of assessment limitations described in Iowa Code section 441.21(9), the county auditor shall determine the assessed values of property by applying the assessment limitations as required under Iowa Code section 441.21(9).

102.29(2) When a property unit of commercial property, industrial property, or property valued by the department pursuant to Iowa Code chapter 434 is comprised of more than one parcel, the county auditor shall apply the assessment limitations described in Iowa Code sections 441.21(5) "b"(2)(a) and 441.21(5) "c"(2)(a), as applicable, to each parcel within the property unit by dividing 150,000 by the value of the entire property unit and multiplying the quotient by the value of each parcel within the property unit. Any remaining value of each parcel within the property unit shall receive the assessment limitations described in Iowa Code sections 441.21(5) "b"(2)(b) and 441.21(5) "c"(2)(b), as applicable. The assessment limitations shall be applied as whole numbers.

EXAMPLE A: Parcels 1, 2, and 3 comprise one property unit of commercial, industrial, or railway property valued at \$300,000 total.

Parcel 1 is assessed at \$100,000.

Parcel 2 is assessed at \$100,000.

Parcel 3 is assessed at \$100,000.

The first \$50,000 of value of each parcel receives the assessment limitation applicable to residential property. The additional value of each parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) "b"(2)(b) and 441.21(5) "c"(2)(b).

EXAMPLE B: Parcels 1, 2, 3, and 4 comprise one property unit of commercial, industrial, or railway property valued at \$850,000 total.

Parcel 1 is assessed at \$500,000.

Parcel 2 is assessed at \$200,000.

Parcel 3 is assessed at \$100,000.

Parcel 4 is assessed at \$50,000.

The first \$88,235 of value of Parcel 1 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) "b"(2)(b) and 441.21(5) "c"(2)(b).

The first \$35,294 of value of Parcel 2 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) "b"(2)(b) and 441.21(5) "c"(2)(b).

The first \$17,647 of value of Parcel 3 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial,

industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) “b”(2)(b) and 441.21(5) “c”(2)(b).

The first \$8,824 of value of Parcel 4 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) “b”(2)(b) and 441.21(5) “c”(2)(b).

EXAMPLE C: Parcels 1 and 2 comprise one property unit of commercial, industrial, or railway property valued at \$500,000 total.

Parcel 1 is assessed at \$400,000.

Parcel 2 is assessed at \$100,000.

The first \$120,000 of value of Parcel 1 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) “b”(2)(b) and 441.21(5) “c”(2)(b).

The first \$30,000 of value of Parcel 2 receives the assessment limitation applicable to residential property. The additional value of the parcel receives the applicable assessment limitation for commercial, industrial, or railway property assessed under Iowa Code chapter 434 described in Iowa Code sections 441.21(5) “b”(2)(b) and 441.21(5) “c”(2)(b).

This rule is intended to implement Iowa Code sections 441.21(5) and 441.21(9) as amended by 2022 Iowa Acts, House File 2552.

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¹ Amendments nullified by 2000 Iowa Acts, SJR 2005, editorially removed IAC Supplement 7/12/00 pursuant to Iowa Code section 17A.6(3).

CHAPTER 103
EXAMINATION AND CERTIFICATION OF ASSESSORS AND DEPUTY ASSESSORS

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 72]

701—103.1(441) Application for examination.

103.1(1) The application for the examination shall be made on a form prescribed by the director and shall constitute an integral part of the examination. The application form shall require information as to the education, training, and experience of the applicant, including evidence of successful completion of the preliminary education requirements required in subrule 72.3(2), and such other information as the director may deem pertinent. Applications must be received by the department at least three days prior to the date of the examination. Applications filed after February 9, 1976, shall be considered public records pursuant to Iowa Code chapter 22 (*City of Dubuque v. Telegraph Herald, Inc.*, 297 N.W.2d 523 (Iowa 1980); 1982 O.A.G. 3).

103.1(2) Upon receipt of a properly filed application, the department shall issue to the applicant a card granting the applicant admission to the examination. No applicant shall be admitted to the examination without presenting the admission card to the examination monitor.

103.1(3) Whenever there occurs a vacancy in the office of assessor, the director shall, upon the written request of the examining board or conference board, forward to the board a copy of any applications requested by either board. When a vacancy occurs in the office of deputy assessor, the director shall, upon the written request of the assessor, forward to the assessor a copy of any applications requested by the assessor.

This rule is intended to implement Iowa Code section 441.5.
[ARC 3838C, IAB 6/6/18, effective 7/11/18; Editorial change: IAC Supplement 11/2/22]

701—103.2(441) Examinations.

103.2(1) Examination questions. Examination questions and answers shall not be made available to persons other than employees of the department authorized by the director to have access to them. Persons who take the examination shall not discuss with anyone the specific questions contained in the examination, nor shall they reveal any specific examination question to another person. This shall not restrict persons who have taken the examination from discussing the general subject matter of the examination.

103.2(2) Materials and supplies. All examination materials shall be furnished by the department and must be returned to the monitor prior to the applicants' leaving the examination room site. During the examination, applicants may be permitted to use their own slide rules or electronic calculators as long as their use does not disturb other applicants. Applicants shall not be permitted to bring any other materials into the examination room, nor shall they be permitted to take any materials from the examination room except their own slide rules or electronic calculators.

103.2(3) Personal conduct during examination. To preserve the integrity of the examinations and the assessing profession, each person taking an examination shall exhibit behavior which is not disruptive to other applicants and no person shall cheat or attempt to cheat on an examination in any manner.

103.2(4) Monitors. The director shall, prior to the examination, provide all applicants with a copy of subrules 72.2(1), 72.2(2), and 72.2(3). Examination monitors shall have the authority to enforce these rules in accordance with subrule 72.2(5).

103.2(5) Violations. Any person who intentionally violates any of the provisions of subrule 72.2(1), 72.2(2), or 72.2(3) shall be subject to the penalties specified in this subrule. If an infraction of subrule 72.2(1), 72.2(2), or 72.2(3) occurs and is detected and confirmed during the examination, the examination of the person committing the infraction shall be confiscated by the monitor and shall not be scored. If the infraction is detected and confirmed after the examination of the person committing the infraction has been scored, the score resulting from that examination shall be reduced to a failing grade and, if necessary, the list of candidates eligible for the position of city or county assessor or deputy assessor shall be adjusted accordingly.

103.2(6) Reserved.

103.2(7) Assessor examination scores. The scores of persons who take the assessor or deputy assessor examination shall be considered public records pursuant to Iowa Code chapter 22.

103.2(8) Reserved.

103.2(9) Length of examination. The director shall determine the appropriate amount of time in which persons may take the examination. Any person who arrives at the examination site after the examination has begun shall not be permitted to complete the examination after the time scheduled for its completion.

103.2(10) Retaking examination. A person who takes the examination for the position of city or county assessor shall not be eligible to take the examination again for a period of at least 30 days following the date the examination was taken, subject also to the restrictions contained in subrule 72.2(5).

103.2(11) Frequency of examination. At the discretion of the director, statewide examinations for the positions of assessor or deputy assessor may be held more than twice a year in Des Moines.

103.2(12) Make-up examination prohibited. Special make-up examinations shall not be held for persons who applied to take the examination for the position of assessor or deputy assessor but who did not for any reason appear at the scheduled examination site.

This rule is intended to implement Iowa Code section 441.5.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 3313C, IAB 9/13/17, effective 10/18/17; Editorial change: IAC Supplement 11/2/22]

701—103.3(441) Eligibility requirements to take the examination.

103.3(1) High school diploma or its equivalent. Only persons who possess a high school diploma or its equivalent are eligible to take the examination. The equivalent of high school diploma shall consist of a high school equivalency diploma issued by the department of education pursuant to Iowa Code chapter 259A, a similar document issued by the U.S. armed forces, or a similar document issued by another state.

103.3(2) Preliminary education requirements.

a. Only persons who have successfully completed the preliminary education requirements are eligible to take the examination. These requirements may be met by achieving one of the following:

(1) Successful completion of a department-approved course on Iowa assessment and taxation that includes coursework on Iowa laws within the time frame defined in paragraph 72.3(2) “*b*”;

(2) Successful completion of a department-approved course on general appraisal and assessment practice in addition to a department-approved course on Iowa laws. Both courses must be successfully completed within the time frame defined in paragraph 72.3(2) “*b*”; or

(3) Receipt of a currently active department-approved professional appraisal designation from a recognized appraisal organization in conjunction with successful completion of a department-approved course on Iowa laws within the time frame defined in paragraph 72.3(2) “*b*” if the appraisal designation is not already specific to Iowa.

b. All required coursework must be completed within five years prior to the date of the examination.

c. For the purposes of this subrule, “successful completion” shall mean answering a minimum of 70 percent of questions correctly on the test given at the completion of the course.

d. The department will publish a list of approved courses and professional designations on its official website.

This rule is intended to implement Iowa Code section 441.5.

[ARC 3838C, IAB 6/6/18, effective 7/11/18; Editorial change: IAC Supplement 11/2/22]

701—103.4(441) Appraisal-related experience. Appraisal-related experience shall include only such experience as may have been obtained through full-time paid employment consisting of the actual appraisal and valuation of property. The experience shall have included the physical inspection of property as part of the appraisal process and the setting of values for parcels of property.

This rule is intended to implement Iowa Code section 441.5.

[Editorial change: IAC Supplement 11/2/22]

701—103.5(441) Regular certification.

103.5(1) To obtain regular certification, a person must pass the examination and (a) possess two years' appraisal-related experience at the time of passing the examination, or (b) have obtained temporary certification, received a provisional appointment as assessor, and successfully completed the course of study prescribed by the director as provided in Iowa Code section 441.5.

103.5(2) If subsequent to passing the examination a person who has not received a provisional appointment as assessor attains two years' appraisal-related experience, the person must again pass the examination to obtain regular certification.

103.5(3) A regular certificate expires two years after the most recent date certification is granted by the director. However, the regular certificate of a person who receives an appointment as assessor remains valid until the person's resignation or removal from the position of assessor, even though more than two years may have expired since certification was last granted.

103.5(4) A regular certificate may at any time be renewed if the person possessing such a certificate passes the assessor examination. A regular certificate so renewed shall remain valid for a period of two years from the date certification was last granted, except as provided in subrule 72.5(3).

This rule is intended to implement Iowa Code section 441.5.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.6(441) Temporary certification.

103.6(1) To obtain temporary certification, a person who does not possess two years' appraisal-related experience must pass the examination for the position of assessor.

103.6(2) The temporary certificate of a person who does not receive a provisional appointment as assessor shall expire two years after the date the certification is granted by the director.

103.6(3) The temporary certificate of a person who does not receive a provisional appointment as assessor may be renewed if the person retakes and passes the assessor examination. A temporary certificate so renewed shall remain valid for a period of two years from the date temporary certification was last granted.

103.6(4) The temporary certificate of a person who receives a provisional appointment as assessor shall expire upon the person's successful completion of the course of study provided in Iowa Code section 441.5 and the granting of regular certification by the director.

103.6(5) The director shall revoke the temporary certificate of a person who receives a provisional appointment as assessor and who does not complete the course of study provided in Iowa Code section 441.5 within 18 months of the person's appointment as assessor. Upon the revocation of an assessor's temporary certificate, the director shall notify the person of the revocation and shall notify the appropriate conference board of the revocation and that the assessor whose temporary certificate has been revoked is no longer eligible to hold the position of assessor.

This rule is intended to implement Iowa Code section 441.5.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.7 Reserved.

701—103.8(441) Deputy assessors—regular certification.

103.8(1) A person who passes the examination for assessor or deputy assessor shall be granted regular deputy assessor certification by the director and shall be eligible for appointment to a deputy assessor position.

103.8(2) A deputy assessor regular certificate shall expire two years after the most recent date certification is granted, except as provided in subrule 72.8(3).

103.8(3) The deputy assessor regular certificate of a person who is appointed deputy assessor shall remain valid until the person's resignation or removal from the position of deputy assessor, or until the death, resignation, or removal of the assessor who appointed the person as deputy assessor. However, in the event of the death, resignation, or removal of the assessor, the deputy assessor certificate of the chief deputy shall remain valid until a new assessor is appointed. Nothing contained in this rule shall be construed to relieve a deputy assessor holding a restricted certificate of the continuing education requirements for the retention of the deputy assessor's position as provided in Iowa Code section 441.8.

103.8(4) A deputy assessor regular certificate may at any time be renewed if the person possessing such a certificate passes the assessor or deputy assessor examination. A deputy assessor certificate so renewed shall remain valid for a period of two years from the date certification was last granted, except as provided in subrule 72.8(3).

This rule is intended to implement Iowa Code section 441.5.
[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.9 Reserved.

701—103.10(441) Appointment of deputy assessors.

103.10(1) The appointments of deputy assessors holding regular certificates shall expire upon the death, resignation, or removal of the assessor, except that the appointment of the chief deputy assessor shall not expire until the appointment of a new assessor, nor shall the restricted certificate of a deputy assessor expire at that time.

103.10(2) After the appointment of a new assessor, the assessor may appoint one or more deputy assessors from the registers of persons certified as eligible for appointment as assessor or deputy assessor. The assessor shall notify the director immediately of persons appointed as deputy assessors, the vacating of office by a deputy assessor, or a change in a deputy assessor's legal name.

This rule is intended to implement Iowa Code sections 441.5, 441.10 and 441.11.
[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.11(441) Special examinations. The conference board of the city or county in which a special examination is held shall reimburse the department for all expenses incurred in the administration of the examination. In determining the amount of reimbursement, the director shall take into consideration the costs of traveling to and from the examination site, meals and lodging, if any, for the monitor administering the examination, the costs of preparing and grading the examinations, and the salary of the monitor during the time expended on the examination.

This rule is intended to implement Iowa Code sections 441.5 to 441.7.
[Editorial change: IAC Supplement 11/2/22]

701—103.12(441) Register of eligible candidates.

103.12(1) Assessor and deputy assessor register.

a. Following the administration and grading of an examination for assessor or deputy assessor, the director shall establish updated registers containing the names, in alphabetical order, and addresses of all persons eligible for appointment. The registers shall not contain test scores, but the scores shall be given to the city or county conference board upon request. Eligible candidates shall remain on the register for two years following the date of certification by the director after which time the person must successfully retake the examination to be placed on the register. However, assessors and deputy assessors with six years of consecutive service shall be placed on the register without further testing being required. "Consecutive service" means service in which there was not more than 30 days' break in service. Assessor and deputy assessor service cannot be combined to meet the six-year consecutive service requirement. Assessors and deputy assessors are responsible for maintaining current contact information with the department, including mailing address, email address, and telephone number.

b. In maintaining the register, the department shall indicate which assessors and deputy assessors have retired from the profession. An assessor or deputy assessor may request to no longer be indicated as retired on the register.

c. Deceased assessors and deputy assessors shall be removed from the register.

103.12(2) Continuing education requirements. Assessors and deputy assessors must complete the continuing education requirements provided in Iowa Code sections 441.5 and 441.10 to be reappointed to their present position or appointed to the same position in a different assessing jurisdiction. This provision does not apply to persons not presently serving as an assessor or deputy assessor. It shall be the duty of the conference board in the case of assessor appointments and the duty of the assessor in the case of deputy assessor appointments to receive written verification from the director of continuing

education requirement compliance. An assessor or deputy assessor appointed as such without having complied with continuing education requirements shall be removed from office on order of the director. No continuing education requirements need be met for an assessor to be appointed a deputy assessor nor for a deputy assessor to be appointed an assessor.

This rule is intended to implement Iowa Code sections 441.5 and 441.10.

[Editorial change: IAC Supplement 11/2/22; ARC 6871C, IAB 2/8/23, effective 3/15/23]

701—103.13(441) Course of study for provisional appointees. A person who possesses temporary certification and receives a provisional appointment as assessor shall within 18 months of the appointment complete a course of study prescribed and administered by the department of revenue. The course of study shall include the following: (1) attendance of at least one basic assessment school conducted by the department of revenue; (2) field instruction by appraisal personnel of the department of revenue; (3) the actual appraisal of representative properties in each class of real estate; and (4) attendance at the annual school of instruction sponsored by the department of revenue and the Iowa State Association of Assessors. In the event a person is unable to attend the annual school of instruction due to circumstances beyond the person's control, the director may, upon the request of the person, substitute comparable instruction for the fulfillment of this requirement. At three-month intervals following the appointment of the assessor, department of revenue appraisal personnel shall complete a review of the assessor's performance and discuss the review with the assessor. If the review indicates unsatisfactory progress is being made toward developing a working knowledge of appraisal principles, the assessor shall be informed as to how the assessor's performance could be improved. Not less than 60 nor more than 90 days before the expiration of the 18-month period, the director of revenue shall inform the assessor and the conference board of the assessor's jurisdiction of the director's determination as to whether the assessor satisfactorily completed the course. If the assessor satisfactorily completes the course, the assessor shall be granted regular certification. If the assessor does not satisfactorily complete the course, the director shall revoke the assessor's temporary certificate and notify the assessor and the conference board of the revocation and that the person is no longer eligible to hold the position of assessor.

This rule is intended to implement Iowa Code section 441.5.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.14(441) Examining board.

103.14(1) Membership. Each voting unit of the conference board shall appoint a member of the examining board. Members of the examining board shall not be members of the conference board, a body which selects a member of the conference board, or the local board of review (1960 O.A.G. 226). A person must be a resident of the assessing jurisdiction served to qualify for appointment as a member of the examining board. A member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

103.14(2) Terms of members. Members of the examining board shall be appointed for terms of six years. In the event of death, resignation, or removal from office of a member of the examining board, the appropriate voting unit of the conference board shall appoint a successor to serve the unexpired term of the previous incumbent.

103.14(3) Removal of member. A member of an examining board may be removed from office only after specific charges have been filed against the member and a public hearing has been held if requested by the member.

103.14(4) Duties. The examining board may, at its discretion, contact all or some of the persons on the register of candidates eligible for appointment as assessor. The examining board may conduct interviews with interested persons and may administer such further examinations as may enable the board to submit a recommendation to the conference board. In arriving at its recommendation, the examining board may set other professional standards including, but not limited to, examination scores, education, and experience.

103.14(5) Report to conference board. The report to the conference board required pursuant to Iowa Code section 441.6 should contain a complete description of the examining board's investigations and

activities. The report may, at the discretion of the examining board, contain recommendations to the conference board.

103.14(6) *Time for action.* The examining board shall take all steps necessary to comply with the time frames set forth in Iowa Code section 441.6.

This rule is intended to implement Iowa Code sections 441.2, 441.3, 441.4, and 441.6.
[ARC 7726B, IAB 4/22/09, effective 5/27/09; Editorial change: IAC Supplement 11/2/22]

701—103.15(441) Appointment of assessor.

103.15(1) *Meeting of the conference board.* At the time specified in Iowa Code section 441.6, the conference board shall hold a meeting and take action to appoint an assessor or request permission to hold a special examination. Within ten days of this meeting, the conference board shall notify the director of the appointment or request a special examination. The notice shall include a statement by the conference board stating whether there have been any charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee. If there have been charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee, the notice shall include a summary of the misconduct, nonfeasance, malfeasance, or misfeasance and any action taken regarding the misconduct, nonfeasance, malfeasance, or misfeasance. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9.

103.15(2) *Time for action.* A conference board shall adhere to the time frames specified in Iowa Code section 441.6 in appointing an assessor to fill a vacant position.

103.15(3) *Special examination.* A request for a special examination shall be made only after the conference board has made a good-faith attempt to appoint an assessor from the current register of eligible candidates. The request shall state the reason or reasons the conference board feels the director of revenue should grant permission to hold the special examination.

103.15(4) *Confirmation by the director of revenue.*

a. The appointee selected by the conference board shall not assume the office of city or county assessor until such appointment is confirmed by the director of revenue. In considering whether to confirm the appointment, the director shall consider any charges or evidence of misconduct, nonfeasance, malfeasance, or misfeasance by the appointee. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9. Within 30 days of receiving the notice contemplated in subrule 72.15(1), the director shall notify the conference board and assessor of the acceptance or rejection of the appointment. An appeal of the director’s decision under this subrule may be made under rule 701—7.37(441).

b. Immediately following selection by the conference board, the appointee assessor shall submit information to the director as required for the director or designee to conduct a background check. The director or designee may review the department’s records and other records in considering whether to confirm the appointment of an assessor.

This rule is intended to implement Iowa Code section 441.6.
[ARC 5288C, IAB 11/18/20, effective 12/23/20; Editorial change: IAC Supplement 11/2/22]

701—103.16(441) Reappointment of assessor.

103.16(1) *Time for reappointment.* A conference board must decide whether to reappoint an incumbent assessor at least 90 days before the expiration of the incumbent’s term. If the incumbent is not to be reappointed, the conference board shall so notify the incumbent in writing at least 90 days before the expiration of the incumbent’s term. Failure of the conference board to provide timely notification of the decision not to reappoint the assessor shall result in the assessor being reappointed. In no case may an incumbent assessor be reappointed earlier than 180 days before the expiration of the incumbent’s term. Within ten days of reappointment or notification of expiration of the incumbent’s term, the conference board shall notify the director of the reappointment or notification of expiration of the incumbent’s term. If the conference board reappoints an incumbent assessor, the notice shall include a statement by the conference board stating whether there have been any charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee. If there have been charges or evidence of any misconduct, nonfeasance, malfeasance, or misfeasance against the appointee, the

notice shall include a summary of the misconduct, nonfeasance, malfeasance, or misfeasance and any action taken regarding the misconduct, nonfeasance, malfeasance, or misfeasance. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9.

103.16(2) Continuing education. A conference board shall not reappoint an incumbent assessor if the board has not received from the assessor education advisory committee certification that the incumbent assessor has satisfied all continuing education requirements.

103.16(3) Confirmation by the director of revenue.

a. An assessor reappointed by the conference board shall not assume the office of city or county assessor in the subsequent term until such reappointment is confirmed by the director of revenue. In considering whether to confirm the reappointment, the director shall consider any charges or evidence of misconduct, nonfeasance, malfeasance, or misfeasance by the appointee. For purposes of this rule, “misconduct” means the same as defined in Iowa Code section 441.9. Within 30 days of receiving notice of reappointment by the conference board, the director shall notify the conference board and assessor of the acceptance or rejection of the reappointment. An appeal of the director’s decision under this subrule may be made under rule 701—7.37(441).

b. Immediately following selection by the conference board, the appointee assessor shall submit information to the director as required for the director or designee to conduct a background check. The director or designee may review the department’s records and other records in considering whether to confirm the reappointment of an assessor.

This rule is intended to implement Iowa Code section 441.6 as amended by 2020 Iowa Acts, House File 2641, section 106, and Iowa Code section 441.8.

[ARC 5288C, IAB 11/18/20, effective 12/23/20; Editorial change: IAC Supplement 11/2/22]

701—103.17(441) Removal of assessor. An assessor may be removed from office for the reasons stated in Iowa Code section 441.9, but only after the charges have been substantiated.

This rule is intended to implement Iowa Code section 441.9.

[Editorial change: IAC Supplement 11/2/22]

701—103.18(421,441) Courses offered by the department of revenue.

103.18(1) Class size. The director may determine the maximum number of students for a particular class in order to maintain a suitable learning environment. Applications to take a course shall be accepted in the order in which they are received by the department. If the number of applications received as of a specific mail delivery results in the receipt of more applications than there are spaces for the class, those applications received in that mail delivery shall be subject to a drawing by lot to determine those which shall be accepted for the class. However, persons who are not currently serving as assessors or deputy assessors shall not be admitted to a course ahead of persons serving as assessors or deputy assessors, regardless of the date on which their applications were received.

103.18(2) Examinations during the course. Examination questions and answers shall not be made available to persons other than employees of the department authorized by the director to have access to such information. Persons who take the examination shall not discuss with anyone the specific questions contained in the examination, nor shall they reveal any specific examination question to another person. This shall not restrict persons who have taken a course examination from discussing the general subject matter of the examination.

103.18(3) Materials and supplies. All examination materials shall be furnished by the department and must be returned to the monitor prior to the students leaving the examination. During the examination, students may be permitted to use their own slide rules or electronic calculators as long as their use does not disturb other students. Students shall not be permitted to bring any other materials into the examination room, nor shall they be permitted to take any materials from the examination room except their own slide rules or electronic calculators.

103.18(4) Personal conduct during course and examination. To preserve the integrity of the examinations and the assessing profession, each person taking an examination shall not exhibit behavior which is disruptive to other persons taking the examination, nor shall a person cheat or attempt to cheat on an examination in any manner.

103.18(5) *Violations.* Any person who intentionally violates any of the provisions of subrule 72.18(2), 72.18(3), or 72.18(4) shall be subject to the penalties specified in this subrule. If an infraction of subrule 72.18(2), 72.18(3), or 72.18(4) occurs and is detected and confirmed during the examination, the examination of the person committing the infraction shall be confiscated by the instructor and shall not be scored. If the infraction is detected and confirmed after the examination of the person committing the infraction has been scored, the score resulting from that examination shall be reduced to a failing grade and the director shall notify the assessor education advisory committee of the action taken. If the infraction is detected and confirmed during the course, the instructor shall expel the student from the classroom, and the student shall not be permitted to take the examination for the course.

103.18(6) *Instructors.* Course instructors shall inform all students of the provisions of subrules 72.18(2), 72.18(3), and 72.18(4). The instructors shall have the authority to enforce these rules in accordance with subrule 72.18(5).

103.18(7) *Retaking examination.* A person who receives a failing score on the examination for a course may retake the examination by submitting a request to the director within ten days of the date the director notifies the person of the examination score. The examination shall be retaken at the office of the department in Des Moines or at the site of any scheduled course examination, and shall be retaken within 30 days of the date the original examination was taken. A person who retakes an examination may not again take that particular course for credit until at least 30 days have passed from the date the examination was retaken. A special examination may be taken only once for a particular course, regardless of the number of times a student takes the course. A special examination shall be given only if the student took and failed the examination given at the end of a course taken for credit.

103.18(8) *Review of examination.* Persons who have taken a course examination may, after presenting proper identification, review their examinations in the office of the department's property tax division within 60 days after the date the examination has been administered. The review shall consist only of examining the person's own answer sheet and the question book. Persons reviewing their examinations shall not be permitted to take notes or otherwise transcribe information during this review, nor shall they have access to the answers to questions contained in the examination. Persons who review their examinations shall be permitted to do so only once, and shall not be eligible to take the same examination for a period of at least 30 days following the date of the review of the examinations.

103.18(9) *Length of examination.* The director shall determine the appropriate amount of time in which persons may take each examination. Any person who arrives at the examination site after the examination has begun shall not be permitted to complete the examination after the time scheduled for completion.

This rule is intended to implement Iowa Code section 441.8.

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CHAPTER 115
PROPERTY ASSESSMENT APPEAL BOARD
[Prior to 11/2/22, see Revenue Department[701] Ch 126]

701—115.1(421,441) Applicability and definitions.

115.1(1) *Applicability and scope.* The rules set forth in this chapter govern the proceedings for all cases in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review.

115.1(2) *Definitions.* For the purpose of these rules, the following definitions shall apply:

“*Appellant*” means the party filing the appeal with the property assessment appeal board.

“*Board*” means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

“*Department*” means the Iowa department of revenue.

“*Electronic filing*” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“*Electronic filing system*” means the system established by the board for the filing of papers and service of the same to opposing parties.

“*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“*Electronic service*” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the board.

“*Notice of electronic filing*” means an email notification generated by the electronic filing system when a document is electronically filed.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*PDF*” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“*Presiding officer*” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the board.

“*Public access terminal*” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“*Remote access*” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the board’s office.

“*Secretary*” means the secretary for the property assessment appeal board.

“*Signature*” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document.

“*Written consideration*” means the board’s consideration of an appeal without a hearing.

115.1(3) *Waivers.*

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

(2) The waiver would not prejudice the substantial rights of any person;

(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

115.1(4) *Time requirements.* Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the board shall afford all parties an opportunity to be heard or to file written arguments.

115.1(5) *Judgment of the board.* Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16; Editorial change: IAC Supplement 11/2/22; ARC 6858C, IAB 2/8/23, effective 3/15/23]

701—115.2(421,441) Appeal and answer.

115.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall set forth the grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

115.2(2) *Form of appeal.* The appeal shall include:

a. The appellant's name, mailing address, email address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. The grounds for appeal;

d. A short and plain statement of the claim;

e. The relief sought; and

f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

115.2(4) *Scope of review.*

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

New grounds in addition to those set out in the protest to the local board of review may be pleaded, and additional evidence to sustain those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from.

The burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

c. The appeal is a contested case.

115.2(5) *Notice to local board of review.* The board shall serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.

115.2(6) *Answer by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer within 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer shall include:

- a.* The subject property's current assessed value;
- b.* A statement regarding the timeliness of the protest to the local board of review and the timeliness of the appeal to the board;
- c.* How the local board of review will participate in the hearing; and
- d.* If the local board of review is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(7) *Docketing.* Appeals shall be assigned docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

115.2(8) *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. *Severance.* The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

115.2(9) *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16; ARC 3430C, IAB 10/25/17, effective 11/29/17; Editorial change: IAC Supplement 11/2/22; ARC 6858C, IAB 2/8/23, effective 3/15/23]

701—115.3(421,441) Nonelectronic service on parties and filing with the board.

115.3(1) *Applicability.* This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system or in all other cases for which the board has not ordered the conversion of the case to an electronic file. Electronic filing and service of documents using the board's electronic filing system is governed by rule 701—115.4(421,441).

115.3(2) *Service and filing of paper documents.* After the appeal has been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. *Service on parties to the appeal.* All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed

by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. Filing with the board. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—115.4(421,441).

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
(Date) (Signature)

115.3(3) Board-generated documents. The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

115.3(4) Conversion of filed paper documents. The board will convert all filed paper documents to an electronic format viewable to registered users of the electronic filing system.

115.3(5) Form of paper documents. Each document delivered to the board must be printed on only one side and have no tabs, staples, or permanent clips. The document may be organized with paperclips, clamps, or another type of temporary fastener or be contained in a file folder.

115.3(6) Return of copies by mail. If a party requests that a document filed in paper form be returned by mail, the party must deliver to the board a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16; Editorial change: IAC Supplement 11/2/22; ARC 6858C, IAB 2/8/23, effective 3/15/23]

701—115.4(421,441) Electronic filing system.

115.4(1) Electronic filing and applicability.

a. Electronic filing. The board will maintain an electronic filing system, which shall be the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—115.3(421,441).

(1) The board may order the conversion of any case to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 115.4(1) "c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item that is not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—115.3(421,441).

115.4(2) Registration.

a. Registration required. Every individual who is filing documents or viewing or downloading documents filed in an appeal must register as a registered user of the electronic filing system.

b. How to register. To register, an individual must complete the registration process online at efile-paab.iowa.gov, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The board may require password changes periodically.

d. Changes in a registered user's contact information. If a registered user's email address, mailing address, or telephone number changes, the registered user must promptly make the necessary

changes to the registered user's information contained in the electronic filing system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

e. Duties of a registered user. Each registered user shall ensure that the user's email account information is current, that the account is monitored regularly, and that email notices sent to the account are timely opened.

f. Canceling registration. Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. Use of username and password. A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username and password shall notify the board promptly.

i. Denial of access. The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

115.4(3) Signatures.

a. Registered user. A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. Documents requiring oaths, affirmations or verifications. Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. Format. Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol "/s/" or "/registered user's name/"), or a digitized signature (an inserted image of a handwritten signature).

d. Multiple signatures. By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having their signatures appear on the document.

115.4(4) Format and redaction of electronic documents. All documents must be converted to a PDF format before they are filed in the electronic filing system. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or that the confidential information is omitted or redacted.

115.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit shall be filed as a separate PDF. Exhibits shall be labeled as required by paragraph 115.7(3) "d."

115.4(6) Filing and service using electronic filing.

a. What constitutes filing. The electronic transmission of a document to the electronic filing system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. Email or fax. The emailing or faxing of a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise authorized by the board.

d. Public access terminal. A public access terminal is available at the reception desk on the first floor of the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties to the appeal who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 115.3(2) "a," on any party that is not a registered user. Notices of

electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 115.3(2) “c” and rule 701—115.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter shall be electronically filed and served. The board shall only mail paper copies of documents as provided in subrule 115.3(3).

115.4(7) Filing by the board on behalf of a party.

a. Where the circumstances and administrative efficiency requires, board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party to an appeal contacts board staff via telephone or other means and indicates the party’s desire to file a motion or request specified in paragraph 115.4(7) “c,” board staff may file the request or motion in the electronic filing system on behalf of the party. The request or motion shall be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff shall not file any motions or requests on behalf of a party if any opposing party requires nonelectronic service under subrule 115.3(2).

c. Only the following motions or requests may be filed by board staff on behalf of a party:

- (1) Request to participate in a hearing in person, by telephone, or by video;
- (2) Motion for hearing;
- (3) Motion for continuance;
- (4) Motion to withdraw appeal.

d. Upon filing of the motion or request, board staff will provide a courtesy copy of the filing to the party.

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701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2) “b,” must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment and motions to dismiss for lack of jurisdiction must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The board may request oral argument on the motion or may issue a ruling without argument. A summary judgment order rendered on all issues in a contested case or order on motion to dismiss for lack of jurisdiction is subject to reconsideration pursuant to subrule 115.9(2).

c. Motions to withdraw. An appellant may withdraw the appeal. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) Settlements. Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. The board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

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701—115.6(421,441) Hearing scheduling and discovery plan.

115.6(1) When required. For appeals involving properties assessed at \$3 million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 115.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion or the motion of any party, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

115.6(2) Prehearing conference. A party may request a prehearing conference to resolve any disputed issue pertaining to the hearing scheduling and discovery plan.

115.6(3) Modification. The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

115.6(4) Failure to comply. A party that fails to comply with a plan shall be required to show good cause for failing to comply and that the other party is not substantially prejudiced. Failing to comply with a plan may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

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701—115.7(421,441) Discovery and evidence.

115.7(1) Discovery procedure. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in an appeal. Any party taking a deposition in an appeal shall be responsible for any deposition costs. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Subject to the limitations in paragraph 115.7(1)“h,” Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in an appeal.

c. Subject to the limitations in paragraph 115.7(1)“h,” Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes in an appeal.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in an appeal. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in an appeal.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to an appeal.

g. Discovery shall be served on all parties to the appeal, but shall not be filed with the board. Parties shall file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board shall include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

h. In addition to the limits on discovery requests in Iowa Rule of Civil Procedure 1.509 and 1.512, the following limits shall apply to appeals of property assessed for less than \$1 million:

(1) A party shall not serve on any other party more than 15 interrogatories, including all discrete subparts.

(2) A party shall not serve on any other party more than ten requests for production of documents, electronically stored information, and things.

A party to the appeal may file a motion with the board requesting leave to serve additional discovery requests. The motion shall set forth the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

115.7(2) Discovery motions. Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

115.7(3) Evidence.

a. *Admissibility.* The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

b. *Stipulations.* Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. *Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 102, or other applicable law. Upon an objection pursuant to paragraph 115.7(3)“e,” irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. *Exhibits, exhibit and witness lists, and briefs.* The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing,

unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—115.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters.

(1) The local board of review's Exhibit A shall be the subject property's property record card after implementation of the final decision of the board of review, including the cost report.

(2) The local board of review's Exhibit B shall be the final decision of the local board of review.

(3) The local board of review's Exhibit C shall be the appellant's petition to the local board of review.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's website. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's website. If the board takes judicial notice of any property record card or cost report, such card or report shall become part of the board's official agency record for the appeal.

115.7(4) Subpoenas.

a. Issuance.

(1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board shall refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 102, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

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701—115.8(421,441) Hearings before the board.

115.8(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

115.8(2) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. Unless subject to a hearing scheduling and discovery plan, if a hearing is requested the board shall serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 115.8(3). The notice of hearing shall contain the following information:

- a. A statement of the date, time, and place of the hearing;
- b. A statement of legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. That the parties may appear and present oral arguments;
- e. That the parties may submit evidence and briefs;
- f. That the hearing will be electronically recorded by the board;
- g. That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h. That audiovisual aids and equipment are to be provided by the party intending to use them;
- i. A statement that, upon submission of the appeal, the board will take the matter under advisement. An order will be issued to the parties; and
- j. A compliance notice required by the Americans with Disabilities Act (ADA).

115.8(3) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon hearing date approved by the board.

115.8(4) *Continuance.* Any hearing may be continued for "good cause." "Good cause" is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. A motion to continue the hearing shall be in writing and, except in exigent or other unusual circumstances, filed not later than 7 days before the hearing or immediately upon "the cause" becoming known. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is "good cause" and whether the alleged cause grows out of the fault or negligence of the moving party. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors, including the existence of a hearing scheduling and discovery plan.

115.8(5) *Telephone and video proceedings.* The board or presiding officer may conduct a telephone or video conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone or video. The board will determine the location of the parties and witnesses for telephone and video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

115.8(6) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed as a written consideration. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. *Authority of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

115.8(7) Dismissal. If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

115.8(8) Hearing recordings. All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense.

115.8(9) Members participating. Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

115.8(10) Ex parte communications with board members. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate. Ex parte communications between a person or party and any board members in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply to proceedings before the board.

115.8(11) Disqualification of board member. A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

- (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
 - (5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;
 - (6) Has a spouse or relative within the third degree of relationship who:
 - 1. Is a party to the appeal, or an officer, director or trustee of a party;
 - 2. Is a lawyer in the appeal;
 - 3. Is known to have an interest that could be substantially affected by the outcome of the appeal;
- or
- 4. Is likely to be a material witness in the appeal; or
 - (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 115.8(11)“a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect.

c. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

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701—115.9(421,441) Posthearing motions.

115.9(1) Motion to reopen records. The board or presiding officer, on the board’s or presiding officer’s own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision. A motion to reopen the record filed after issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed prior to issuance of the final decision, the board may consider:

- a.* Whether the information sought to be admitted is material;
- b.* The timeliness of the motion;
- c.* Whether the information sought to be admitted was available as of the date for hearing or written consideration and whether there is good cause for failing to present it;
- d.* The prejudice on the other party;
- e.* Any and all other factors deemed relevant by the board.

115.9(2) Rehearing and reconsideration.

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued. The board's consideration of the application shall be limited to the admitted exhibits and testimony offered at the hearing. No new evidence will be accepted or considered.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a statement of the alleged grounds of error and the relief sought. If a claim of error of fact is asserted, the application should clearly specify the factual error and cite to admitted exhibits or testimony in support of the claim. If a claim of error of law is asserted, the application should clearly specify the legal error and cite statutes, case law, administrative rules, or other sources of law in support of the claim.

c. Notice to other parties. The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—115.3(421,441) and 701—115.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Resistance to applications for rehearing or reconsideration. A resistance to an application for rehearing or reconsideration must be filed within ten days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

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701—115.10(17A,441) Judicial review.

115.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

a. A party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A. Within ten days of filing for judicial review, the party seeking judicial review must serve notice on the board and notice on all parties to the contested case proceeding pursuant to Iowa Code chapter 17A.

b. The party or parties seeking judicial review shall bear the costs of preparing the transcription of the board hearing, if a transcription is required by the reviewing court.

115.10(2) Stays of agency actions. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c." A stay may be vacated by the board upon application of any other party.

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701—115.11(22,421) Records access.

115.11(1) Location of record. A request for access to a record should be directed to the custodian.

115.11(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

115.11(3) Request for access. Requests for access to open records may be made in writing, in person, by email, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

115.11(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request

for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

115.11(5) *Security of record.* No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

115.11(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

115.11(7) *Fees.*

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

115.11(8) *Retention of board records.* The board will follow the records retention schedule for administrative case files established by the state records commission.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; Editorial change: IAC Supplement 11/2/22; ARC 6858C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.

[Filed ARC 2108C (Notice ARC 2047C, IAB 6/24/15), IAB 8/19/15, effective 9/23/15]

[Filed ARC 2545C (Notice ARC 2464C, IAB 3/16/16), IAB 5/25/16, effective 6/29/16]

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CHAPTER 203
ELEMENTS INCLUDED IN AND EXCLUDED
FROM A TAXABLE SALE AND SALES PRICE

[Prior to 9/7/22, see Revenue Department[701] Ch 212]

Rules in this chapter include cross references to provisions in 701—Chapter 26 that were applicable prior to July 1, 2004.

701—203.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

EXAMPLE. The advertised or marked price is \$1. When a sale is made, the purchaser pays or agrees to pay \$1.05, which represents the purchase price plus tax, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

“This dress—\$10 plus tax”; “This dress—\$10 plus 50 cents tax”; or “This dress—\$10.50 including tax.”

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price “includes tax,” the retailer will be allowed to determine sales price by dividing the total of such retailer’s price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax plus a 1 percent local option tax would use a factor of 106 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer’s price or it must be stated on each invoice that tax is included in the retailer’s price. If the invoice states “tax included,” the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer’s price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer’s price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. *State ex rel. Turner v. Younker Bros., Inc.*, 210 N.W.2d 550 (Iowa 1973); *Road Machinery Supplies of Minneapolis, Inc. v. The Commissioner of Revenue*, Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835, 1977 WL 963 (Minn. Tax.). See rule 701—213.3(423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(47)“b”(2).
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.3(423) Retailers’ discounts, trade discounts, rebates and coupons.

203.3(1) Retailers’ discounts. A retailer’s discount reduces the retailer’s price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer’s price as a debt, the debt being the sales price after the agreed discount has been deducted. The word “discount” means “to buy at a reduction.” *Benner Tea Company v. Iowa State Tax Commission*, 252 Iowa 843, 109 N.W.2d 39 (1961).

Any discount a retailer allows that reduces a retailer's price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the retailer's price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer's failure to take the action which allows the discount to be taken.

203.3(2) Rebates. A "rebate" is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer's price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

203.3(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by the retailer which actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 212.3(1). *Saxon-Western Corporation v. Mahin*, 369 N.E.2d 1185 (Ill. 1979).

EXAMPLE 1. C acquires a 30¢ off coupon issued by manufacturer of A-B Band-aids for A-B Band-aids. The coupon can be redeemed at a store which sells the product. C goes to store D and purchases a box of A-B Band-aids which shows a price of \$1.50. C pays \$1.20 plus the 30¢ coupon. D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the \$1.50 because D's total sales price is \$1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2. E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for \$2. The coupon can only be redeemed at E's retail store. F acquires the coupon and redeems it at E's store. The purchase price for F was \$2 for both hamburgers. The tax is due on the \$2 because this amount is the sales price for E, even though the value of the two hamburgers would normally be \$4. In this situation, the sales price for the two hamburgers is \$2.

203.3(4) Trade discounts. A "trade discount" is a discount from a seller's list price which is offered to a class or category of customer, e.g., retailers or wholesalers. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of a manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; see subrule 212.3(3).

This rule is intended to implement Iowa Code section 423.1(47) "b"(1).
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.4(423) Excise tax included in and excluded from sales price.

203.4(1) An excise tax which is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price which measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the

circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs “*b*” and “*c*” above, it is not excludable because it does not meet the requirements of paragraph “*a*.” The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer’s sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph “*b*” above.

203.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

d. The federal tax imposed by 26 U.S.C. Section 4071 which expires October 1, 2005, on tires.

203.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(47) “*b*”(3).
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.5(423) Trade-ins.

203.5(1) Trade-ins. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer’s business; and

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1. A owns a car valued at \$5,000. A trades his used car to XY car dealer for a used car valued at \$12,000. XY car dealer normally sells used cars. Use tax would be due on the \$7,000 in money which A paid to XY car dealer, as both conditions “*a*” and “*b*” have been met.

EXAMPLE 2. John Doe has a pickup truck with a value of \$2,000. John wants a boat, so he offers to trade his \$2,000 pickup to ABC boat dealer for the purchase of a boat valued at \$5,000. ABC boat

dealer is a new and used boat dealer. ABC boat dealer agrees to accept the \$2,000 pickup and \$3,000 cash in trade for the boat. In this example, the tax would be computed on \$5,000. The trade-in provision would not apply because condition “a” has not been met. The property traded is not the type of property normally sold by ABC boat dealer in the regular course of the boat dealer’s business.

EXAMPLE 3. ABC Corporation trades 500 bushels of corn and \$500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because condition “b” has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4. Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at \$650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept A’s used refrigerator at a value of \$150 toward the purchase price of the new refrigerator. A pays Hometown Appliance \$500 in cash. The trade-in provision applies as both conditions “a” and “b” have been met, and tax would be due on the \$500.

Several months later, Hometown Appliance sells the used refrigerator it received from customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions “a” and “b” were met. The sale is “at retail,” even if the sales price is exempt from tax.

EXAMPLE 5. ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is \$80. ABC Auto Supply allows a \$20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions “a” and “c” have been met.

203.5(2) All the provisions of subrule 212.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in 212.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1. John Doe has an automobile with a value of \$2,000. John and his neighbor Bill Jones, who has an automobile valued at \$3,500, decide to trade automobiles. John pays Bill \$1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on \$1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2. Joe has a Ford automobile with a value of \$5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at \$5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

203.5(3) Trade for services. The trade-in provisions referenced in Iowa Code section 423.1(47) “a”(7) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services. When taxable enumerated services are traded, the sales price would be determined based on the value of the service or other consideration.

EXAMPLE: A and B agree that A will purchase a car which B now owns. The two parties agree on a purchase price of \$9,000. In return for transfer of title from B, A agrees to pay B \$7,000 in cash

and to paint B's house with paint provided by B. A and B agree that the value of B's house painting services is \$2,000. House painting is a taxable enumerated service; rule 701—219.13(423) contains more information about this service. Since the trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is \$9,000 and not \$7,000.

203.5(4) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sell to a third-party dealer a vehicle (or other tangible personal property) which the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE. A enters into a three-way agreement with B, the lessor. Under the terms of the contract, A sells a 2005 Ford Taurus owned by A to C, a used car dealer. The retail price for the Ford Taurus is \$30,000. C then sells the Ford Taurus to B for the reduced price of \$25,000. B then leases the Ford Taurus to A for a period of 12 months. The \$5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes. See also *Reynolds Motor Co. et al. v. Iowa Dep't. of Revenue*, Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

This rule is intended to implement Iowa Code sections 423.1(47) "a"(7) and 423.3(59).
[ARC 6508C, IAB 9/7/22, effective 10/12/22; ARC 6704C, IAB 11/30/22, effective 1/4/23]

701—203.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure); or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. See rule 701—219.13(423).

This rule is intended to implement Iowa Code sections 423.1(47) "a"(5) and 423.1(47) "b"(4).
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax. *Cohen v. Playboy Club International, Inc.*, 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code sections 423.1(47) and 423.2(1).
[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.8(423) Payment from a third party. The sales price from the sales of tangible personal property, services, or enumerated services includes consideration received by the seller from third parties. The following conditions shall apply:

203.8(1) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

203.8(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

203.8(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

203.8(4) One of the following criteria is met:

a. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

b. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

This rule is intended to implement Iowa Code chapter 423.

[ARC 8021B, IAB 7/29/09, effective 9/2/09; ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—203.9(423) Taxation of transactions due to rate change. The following provisions shall apply in determining whether or not a transaction is subject to an existing rate of sales or use tax or to a new rate of sales or use tax. In the examples contained in the rest of this rule, assume that a bill has been enacted into law which increases the sales and use tax rate from 6 to 7 percent and that the effective date of this bill is July 1.

203.9(1) General principles. A change in the sales tax rate applies to a sale of tangible personal property and specified digital products if delivery of the property or product under a contract of sale occurs on or after the effective date of the legislation which changes the rate of taxation. The intent of the parties to the contract for sale determines when delivery occurs. However, in the event the intent is not readily established from the contract, the rules set out in the Uniform Commercial Code (Iowa Code chapter 554) shall apply in order to determine the place of delivery.

In the examples below, so long as delivery under a contract for sale occurs on or after July 1, the 7 percent sales tax rate applies. It is not necessary that any other aspects of the sale, such as payment for the delivered property, occur on or after that date.

In the three examples immediately below, “delivery” is physical transfer of possession of the tangible personal property directly from the seller to the purchaser. However, see subrule 14.3(2) for examples of delivery which do not involve transfer of possession directly from the buyer to the seller, and subrule 14.3(3) which explains a type of delivery which does not involve any physical transfer of possession of property.

EXAMPLE A: A enters into a sales contract to purchase a riding lawn mower from B. This contract (offer and acceptance) is entered into on June 20. B delivers the lawn mower to A on June 28, and A pays B for the lawn mower on July 3. Since delivery, under the contract for sale, occurred prior to July 1, the sales tax in this example is computed at the rate of 6 percent.

EXAMPLE B: A wants to purchase a home computer from B. On June 28, A orders the computer from B and the parties agree that the contract of sale is made if and when B makes delivery of the home computer to A. B delivers the computer on July 10. In this example, the sales tax is at the rate of 7 percent because delivery was not made until July 10. It is the delivery after July 1, rather than the lack of the valid contract of sale prior to that date, which determines that the rate of tax shall be 7 rather than 6 percent.

EXAMPLE C: On May 1, A enters into a conditional sales contract with B to purchase a television set. The contract requires A to make monthly installment payments for 36 months, beginning June 1. The contract also requires B to deliver the television to A on or before July 15. B retains title to the television set solely for the purpose of securing payment from A. A makes the first monthly payment to B on June 1. B delivers the television to A on the last day allowable, July 15. The 7 percent rate will apply. See subrule 14.3(4) for more discussion of conditional sales.

203.9(2) *Shipment by carrier.* The following principles shall be used to determine the conditions under which delivery is made pursuant to a contract for sale when the retailer utilizes a carrier to ship tangible personal property to a purchaser. If the contract for sale makes no reference of an F.O.B. (free on board) or F.A.S. (free along side) point or of any other point at which title and risk of loss with regard to the tangible personal property are transferred from the retailer to the purchaser and contains no other indication of a delivery point, it shall be presumed that delivery of the property occurs when the seller transfers possession of the property to the carrier. If property is sold under a C.I.F. (cost, insurance and freight) or a C. & F. (cost and freight) contract, it shall also be presumed that delivery occurs when the retailer transfers possession of the property to the carrier. If a contract for sale makes mention of an F.O.B. or F.A.S. point, it shall be presumed that the parties intended delivery of the property at the time the property reaches that point.

203.9(3) *Constructive delivery.* “Constructive delivery” has occurred if the retailer and the purchaser agree that title, risk of loss, and right of possession to tangible personal property have passed from the retailer to the purchaser; that is, the parties agree that a sale has occurred, but actual physical possession of the property remains with the retailer or someone other than the buyer after the sale. If parties to a contract of sale have agreed upon constructive delivery, the sale occurs at the time of constructive delivery and not at the time of transfer of physical possession of the property from buyer to seller or at an F.O.B., F.A.S., or similar type of point.

EXAMPLE: A owns an art gallery in Des Moines. Art collector B from Cedar Rapids visits the gallery. Collector B wishes to purchase a painting that is very large. However, collector B cannot immediately transport the painting back to Cedar Rapids. On June 1, A and B sign a contract for the sale of the painting. Title to the painting, risk of loss, and the right to take possession of the painting immediately pass to B. However, the parties also agree that B can store the painting with A in return for a small monthly charge. B inquires of various parties whether or not they would be willing to transport the painting from Des Moines to Cedar Rapids. B finds no one satisfactory to do this and eventually signs a separate contract for transport with A in which A agrees to do the transporting. The transport of the painting is accomplished on September 1. The painting was delivered from A to B in Des Moines on June 1. Thus, its sale occurred on that date rather than September 1. Delivery was accomplished with the “constructive” delivery which occurred on June 1 rather than by the physical transfer of possession from A to B which occurred on September 1. Because of this, the rate of tax is 6 and not 7 percent.

203.9(4) *Conditional sales.* A “conditional sale” is no different from an absolute sale, except in the matter of payment. *Hansen v. Kuhn*, 284 N.W. 249, 226 Iowa 794 (1939). A conditional sale has not occurred until delivery under a contract of conditional sale has occurred. See Example C in subrule 14.3(1) for an example of a conditional sales contract in which delivery of the property under the contract occurred long after the making of the contract and after the buyer had made several payments under the contract. As soon as delivery has occurred, tax on the sales price of the sale is due to the department. See rule 701—16.47(423) for additional discussion of conditional sales.

203.9(5) *Use tax—changed rate of taxation on the use of tangible personal property and specified digital products.* A changed use tax rate applies to the use of tangible personal property and specified digital products in Iowa when the first taxable use occurs on or after the effective date of the legislation which changes the rate of tax. In the following example, assume that the change in the use tax rate is from 6 to 7 percent and that the legislation which enacts this change is effective as of July 1.

EXAMPLE: On May 24, A and B enter into a contract for A’s purchase of a machine from B. Under the contract, delivery of the machine to A is to occur outside the state of Iowa, F.O.B., Minneapolis, Minnesota. On June 27, A takes delivery of the machine in Minneapolis. A then transports the machine into Iowa on July 2. A’s transport of the machine into Iowa constitutes a use of the machine by A in

Iowa for the first time. Under these circumstances, the machine is subject to the 7 percent rate since the tax rate in effect at the time of first use, July 2, governs if property is purchased outside of Iowa.

203.9(6) *Changed rate for the sales tax on enumerated services.* A changed sales tax rate on enumerated services applies if services are rendered, furnished, or performed in Iowa on or after the effective date of the legislation which changes the rate. The date upon which the parties enter into a service contract is not of importance in determining whether the old rate or new rate is applicable. Nor, for the purpose of computing the sales tax, is it important to know when the product or result of the service is used by the ultimate user. This situation must be distinguished from the application of use tax to services. For use tax purposes, the date when the product or result of the service is used may be important. See subrule 14.3(7). For the purposes of this subrule and subrules 14.3(7), 14.3(8), and 14.3(9), assume that the rate of tax is being raised from 6 to 7 percent and that the effective date of the legislation which increases the rate is July 1.

EXAMPLE A: On June 1, A and B enter into a service contract in which B agrees to provide testing laboratory services to A. B performs these services in Iowa on June 26. The results of these services are forwarded to A on July 8, and A observes those results and makes use of them on that latter day. Under these circumstances, the testing laboratory services were subject to service tax at the rate of 6 percent because B rendered, furnished, or performed the services on June 26, which is prior to July 1.

EXAMPLE B: On June 1, B offers to perform testing laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on July 5, and the results forwarded to A on July 8. Under these circumstances, the testing laboratory services are subject to tax at the 7 percent rate. The services are subject to that rate because the services were rendered on July 5 and not because the parties entered into the contract for services on July 5. As in Example A above, if a contract had been entered into before July 1, and the services performed after that date, service tax at the 7 percent rate would still have been applicable.

EXAMPLE C: On June 7, A enters into a service contract with B for the repair of A's automobile. The contract provides that A shall make installment payments for 12 months. The automotive repairs are extensive. B begins repair of the automobile on June 9 and completes repair on June 27. Since sales tax is due when the service is rendered, furnished, or performed, the tax is 6 percent of the contract price. Installment payments made on and after July 1 do not accrue any greater rate of tax. This situation is different from a service contract entered into prior to July 1, which requires periodic payments for continuous services, as set forth under subrule 14.3(8).

EXAMPLE D: A, a civic center, contracts with B, an orchestra, to perform on July 10. The contract is made on May 26. A sells tickets of admission for B's July 10 concert. The tickets are sold in the month of June and from July 1 to and including July 9. All ticket sales in June are subject to tax at the 6 percent rate, and all ticket sales in July are subject to tax at the 7 percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable events are the sales of admission tickets between A and the purchasers of the tickets. The date when a ticket is delivered to a purchaser controls whether the tax rate is 6 or 7 percent.

203.9(7) *Changed rate of use tax on services.* If the product or result of a taxable service rendered, furnished, or performed outside of this state is first used in this state on or after July 1, the 7 percent use tax rate applies.

EXAMPLE: On June 14, A and B enter into a contract for repair of A's machine, the repair to be done outside of Iowa. On June 28, the machine is delivered to B who performs the taxable service of machine repair and returns the machine to A in Iowa on July 1. Under these circumstances, the product or result of the taxable machine repair service is first used by A on July 1; therefore, the 7 percent tax rate applies.

203.9(8) *Service contracts requiring periodic payments.* If parties enter into a service contract prior to July 1, and the contract requires periodic payments, payments made on or after July 1 under the contract are subject to the 7 percent sales or use tax rate.

EXAMPLE A: A and B enter into an agreement for the lease of equipment on April 1. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after July 1, the tax rate is 7 percent.

EXAMPLE B: On May 1, A joined a private club and paid membership fees for the privilege of participating in athletic sports provided to club members. A must make periodic payments every three months. These payments are made in January, April, July, and October. Under these circumstances, A's July payment and payments made subsequently are subject to tax at the rate of 7 percent.

203.9(9) *Gas, electricity, water, heat, solid waste collection, sewer, pay television, and communication services.* The sales price from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the 7 percent rate when the date of billing the customer falls on or after July 1. The sales price from the services of solid waste collection and disposal, sewer, and pay television are also treated in this manner.

EXAMPLE A: A is the customer of the B water utility. A receives a bill from B on July 5. The billing date is July 1, and the bill is for water provided during the month of June. Under these circumstances, sales tax should be billed at the rate of 7 percent, because the date of billing is July 1.

EXAMPLE B: A is the customer of the B electric utility company. A receives a bill from the B company on July 2. There is no billing date set forth on the bill. The bill was mailed by the B company to A on June 28. Under these circumstances, the billing date is June 28, and the sales tax should be billed at the rate of 6 percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., June 26, this latter date (June 26) would be considered the billing date.

EXAMPLE C: A is the customer of the B rural electric cooperative (REC). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on July 1 and the first date of each month thereafter, the sales tax should be paid at the rate of 7 percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to June 30 would require payment of sales tax at the 6 percent rate.

EXAMPLE D: A is the customer of B telephone company. A receives a bill from B company on July 3, covering intrastate long distance telephone calls in June and local service in July. The billing date on the face of the bill is June 28. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of 6 percent.

If, in this example, the billing date on the bill had been July 1, the sales tax should be billed at the rate of 7 percent for all telephone services, local and intrastate long distance.

This rule is intended to implement Iowa Code section 423.2.

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CHAPTER 219
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—219.1(423) General information. 2005 Iowa Code subsection 423.2(1) imposes a tax upon the sales price from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those services relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 701—219.12(423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the sales price from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

2005 Iowa Code section 423.5 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute. 2005 Iowa Code subsection 423.2(1) "b" provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes

material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 219.3(1), 219.3(2) and 219.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 219.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 701—219.3(423) and 701—219.4(423).

When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity; reference 701—subrule 19.12(5). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers that sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 19.12(5), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 701—219.2(423) and 701—219.4(423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) Building materials. The term “building materials” as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.*, 306 So. 2d 5 (Ala. 1974).

219.3(2) Building supplies. The term “building supplies” as used in this rule means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor or builder and which is used or consumed by the contractor. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.*, 85 P.2d 1085, 197 Wash. 569.

219.3(3) Typical items. While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

- Asphalt
- Bricks
- Builders' hardware
- Caulking material
- Cement
- Central air conditioning
- Cleaning compounds
- Conduit
- Doors
- Ducts
- Electric wiring, connections, and switching devices
- Fencing materials
- Flooring¹
- Glass

Gravel
Insulation
Lath
Lead
Lighting fixtures
Lime
Linoleum¹
Lubricants
Lumber
Macadam
Millwork
Modular and mobile homes
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Sheet metal
Steel
Stone
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

219.3(4) *Building equipment.* The term “building equipment” as used in this rule means any vehicle, machine, tool, implement or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work. “Building equipment” includes, but is not limited to, such items as:

Compressors
Drill presses
Electric generators
Forms
Hand tools

Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. See rule 701—219.21(423) for an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

¹ Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. Reference rule 701—16.48(422,423) for an exception concerning carpeting. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are also not considered to be building materials.

701—219.4(423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring “over-the-counter” basis the same type of building materials and supplies which are used by the contractors, subcontractors and builders in their own construction work. A person operating in such a manner is referred to in this rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person’s business and determine if it is that of a contractor or a contractor-retailer. A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract performed in Iowa. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced. Reference rule 701—18.31(422,423) and rule 701—219.13(423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 701—219.8(423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business’s activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. Reference rule 701—288.3(423) and rule 701—219.19(423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See 2005 Iowa Code subsection 423.2(1)“b.”

The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, EFG Company should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—231.11(423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith’s Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an

inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 701—219.6(423) for a characterization of the term manufacturer's "fabricated cost."

219.5(2) A contractor-retailer's withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

219.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—219.6(423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

219.5(5) Reference rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 701—219.4(423) relating to contractors and rule 701—219.5(423) relating to materials, supplies, and equipment used in construction contracts within and outside Iowa.

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts and general rules. A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—231.11(423), a mobile home whether or not sold subject to the issuance of a certificate of title, "manufactured housing" (reference definition in rule 701—33.10(423)), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see subrule 219.7(2) regarding the "60 percent rule" and reference rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials, that is, tax is due when those structures are sold to or used by owners,

contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation*, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

219.7(2) *Exceptions to the general rules.* There are a number of exceptions to the general rules stated above in 219.7(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows:

a. Modular homes. Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. See rule 701—231.11(423). This 60 percent rule is applicable only to a “modular home” as that phrase is defined in rule 701—231.11(423) and not to other types of prefabricated structures which do not meet the definition of the term “modular home” such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing. Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 219.7(2) “a” above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. Reference rule 701—32.3(423). All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see 2005 Iowa Code chapter 423 and Iowa Code chapter 435.

219.7(3) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor’s sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 701—219.4(423).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 701—219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 701—219.7(4) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 701—219.8(423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(4) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer’s part. See rule 701—219.6(423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 219.7(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(5) Examples. The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because 2005 Iowa Code subsection 423.2(1) "b" exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

701—219.8(423) Types of construction contracts. The term “construction contract” is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 701—219.11(423) and 701—219.12(423) for details.

- Ash removal equipment (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds which become attached to real property
- Boilers (installed as distinguished from portable units)
- Brick work
- Builder’s hardware
- Burglar alarm and fire alarm fixtures
- Caulking materials work
- Cement work
- Central air conditioner installation
- Coal handling equipment (installed as distinguished from portable units)
- Concrete work
- Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
- Drapery installation
- Electric conduit work and items relating thereto
- Electric distribution lines
- Electric transmission lines
- Floor covering which is permanently installed—see rule 701—16.48(422,423) for an exception to this regarding carpeting
- Flooring work
- Furnaces, heating boilers and heating units
- Glass and glazing work
- Gravel work (excluding landscaping)
- Installation of modular homes on foundations
- Lathing work
- Lead work
- Lighting fixtures
- Lime work
- Lumber and carpenter works
- Macadam work
- Millwork installation
- Mortar work
- Oil work
- Paint booths and spray booths (installed as distinguished from portable units)
- Painting work
- Paneling work
- Papering work
- Passenger and freight elevators
- Piping valves and pipe fitting work
- Plastering work

- Plumbing work
- Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
- Putty work
- Refrigeration units (central plants installation as distinguished from portable units)
- Reinforcing mesh work
- Road construction (concrete, bituminous, gravel, etc.)
- Roofing work
- Sheet metal work
- Sign installation (other than portable sign installation)
- Steel work
- Stone work
- Stucco work
- Tile work—ceiling, floor and walls
- Underground gas mains
- Underground sewage disposal
- Underground water mains
- Vault doors and equipment
- Wallboard work
- Wall coping work
- Wallpaper work
- Water heater and softener installation
- Weather stripping work
- Wire net screen work
- Wood preserving work

701—219.9(423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding building equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

In a “mixed contract” (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 701—219.10(423).

Certain services which are enumerated in 2005 Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. Reference rule 701—15.14(422,423) relating to installation charges. Examples of the enumerated services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE. Company B contracts with Company A to furnish and install a portable conveyor unit in Company A’s new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on

the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A.

701—219.10(423) Construction contracts with equipment sales (mixed contracts). Construction contracts with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment. As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier. Reference 701—Chapter 30 of the rules regarding use taxes. Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE. Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A.

When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.

d. Office, bank and savings and loan association furniture and equipment, including office machines.

e. Radio, television and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens,

and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

219.11(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

- a. Boilers and furnaces.
- b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.
- c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.
- d. Fixed (year-round) wharves and docks.
- e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Reference rule 701—18.35(422,423) relating to drainage tile.
- f. Mobile and modular homes installed on foundations.
- g. Planted nursery stock.
- h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- i. Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).
- j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- k. Silos and grain storage bins.
- l. Storage tanks constructed on the site.
- m. Swimming pools (wholly or partially underground (except portable pools)).
- n. Truck platform scale foundations.
- o. Walk-in cold storage units that become a component part of a building.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—219.12(423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.

EXAMPLE. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation,

its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore*, 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.*, 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue*, 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization*, 299 P.2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.*, 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson*, 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant*, Order of the Director of Revenue, June 16, 1975.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in 2005 Iowa Code section 423.2 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. See rule 701—219.21(423) for an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair (see subrule 219.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 219.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing*, 19 N.D. 98, 123 N.W. 393 (1909).

219.13(1) Repair. Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

2005 Iowa Code section 423.1(42) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of 2005 Iowa Code subsection 423.2(1)“b.” In addition, such persons are not considered to be owners, subcontractors or builders. Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to 2005 Iowa Code subsection 423.2(1)“b” and must pay tax at the time building materials, supplies and equipment are purchased from vendors even though the contractors, subcontractors or builders hold a valid sales tax permit. See rules 701—219.2(423) and 701—219.3(423). In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges. A contractor’s markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in 2005 Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Reference rule 701—18.31(422,423) for an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

- a. Repair of broken or defective glass.
- b. Replacement of broken, defective or rotten windows.
- c. Replacing individual or damaged roof shingles.
- d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.
- e. Repair or replacement of broken or damaged garage doors or garage door openers.
- f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.
- g. Replacing or repairing a broken water heater, furnace or central air conditioning compressor.
- h. Restoration of original wiring in a house or building.

219.13(2) *New construction, reconstruction, alteration, expansion and remodeling examples.* The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

- a. The building of a garage or adding a garage to an existing building would be considered new construction.
- b. Adding a redwood deck to an existing structure would be considered new construction.
- c. Replacing a complete roof on an existing structure would be considered reconstruction or alteration.
- d. Adding a new room to an existing building would be considered new construction.
- e. Adding a new room by building interior walls would be considered alteration.
- f. Replacing kitchen cabinets with some modification would be considered an improvement.
- g. Paneling existing walls would be considered an improvement.
- h. Laying a new floor over an existing floor would be considered an improvement.
- i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.
- j. Building a new wing to an existing building would be considered an expansion.
- k. Rearranging the interior physical structure of a building would be considered remodeling.
- l. Installing manufactured housing or a modular or mobile home on a foundation would be considered new construction. However, reference rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.
- m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.
- n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

219.13(3) *“On or connected with” explained.* The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production

machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; reference rule 701—18.58(422, 423)). However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 219.13(2)“d”). The existing home is in need of a number of the repairs described in 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. Refer to subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

219.13(4) *Excavating and grading.* Excavating includes digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth’s structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services of excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick*, 214 Iowa 1388 (1932). However, the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under 2005 Iowa Code subsection 423.2(6).

219.13(5) *Various nontaxable services.* Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

219.13(6) *Carpentry repair or installation.* Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

219.13(7) Roof, shingle, and glass repair. Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

219.13(8) Electrical and electronic repair and installation.

a. In general. Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

b. New machinery or equipment. The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

c. Definition. For purposes of this subrule:

“*Installation*” includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or making any article of personal property powered by electric current operative with respect to its intended function or purpose.

219.13(9) Excavating and grading.

a. In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

b. Definitions. For purposes of this subrule:

“*Excavation*” means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. “*Excavation*” ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

“*Grading*” means a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level. “*Grading*” includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

219.13(10) Painting, papering and interior decorating.

a. In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

b. Definitions. For purposes of this subrule:

“*Interior decoration*” means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

“*Painting*” means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation purposes. This includes all necessary preparations, including surface preparation. “*Painting*” does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

“*Papering*” means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

c. Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

219.13(11) Pipe fitting and plumbing.

a. In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

b. Definition. For purposes of this rule:

“*Pipe fitting and plumbing*” means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

219.13(12) Wood preparation.

a. *In general.* Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

b. *Definition.* For purposes of this rule:

“*Wood preparation*” includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

219.13(13) Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

219.13(14) Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.39(423) contains more information about landscaping services.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 6704C, IAB 11/30/22, effective 1/4/23]

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. Reference rule 701—15.13(422,423).

701—219.15(423) Start-up charges. Start-up charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

701—219.16(423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a material supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—219.17(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general contractor cannot be held responsible for the tax liability incurred on building materials, supplies and equipment by a subcontractor in the completion of a construction contract. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

701—219.18(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

701—219.19(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 701—219.9(423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 701—219.4(423) and subrule 219.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. Reference rule 701—288.3(423) for detailed information on resale certificates.

701—219.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumer's use tax return or as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumer's use tax return. Consumer's use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

701—219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.21(1) Exempt lease or rental of machinery and equipment. The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder.

219.21(2) Exempt sales, including lease or rental of equipment. Beginning July 1, 2005, the sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax. See 701—Chapter 241, division II, for an explanation of the new excise tax imposed on these transactions as of July 1, 2005.

[ARC 6704C, IAB 11/30/22, effective 1/4/23]

701—219.22(423) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

This rule is intended to implement Iowa Code section 423.2(6) “x.”
[ARC 6704C, IAB 11/30/22, effective 1/4/23]

701—219.23(423) Construction contracts with designated exempt entities. This rule applies to exempt sales of building materials, supplies, equipment, or services to certain persons performing construction contracts for sponsors that are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

219.23(1) Definitions.

“Construction contract” means the same as defined in rule 701—219.8(423).

“Designated exempt entity” means the same as defined in Iowa Code section 423.3(80).

“GovConnectIowa” means the e-services portal of the department.

219.23(2) Registration with the department. A designated exempt entity seeking to issue exemption certificates to contractors, subcontractors, builders, or manufacturers performing construction contracts shall register with the department through GovConnectIowa. The designated exempt entity shall provide the following information:

- a. The name and address of the designated exempt entity.
- b. The federal identification number of the designated exempt entity.
- c. The name of the construction project or the project number for which exemption is requested.
- d. A general description of the construction project.
- e. The name and address of all contractors, subcontractors, builders, or manufacturers to which the designated exempt entity shall provide exemption certificates.
- f. Additional information as requested by the department if the status of the entity seeking registration as a designated exempt entity is unclear.

219.23(3) Exemption certificates. Once a designated exempt entity’s registration is completed and approved, the designated exempt entity can obtain exemption certificates to provide to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers may then provide these exemption certificates to retailers when purchasing building materials, supplies, equipment, or services to be used in completion of the construction contract with the designated exempt entity in order to make those purchases exempt from sales tax.

219.23(4) Exempt purchases, withdrawals from inventory, and manufacturers’ fabrication costs.

a. A contractor, subcontractor, or builder who purchases building materials, supplies, equipment, or services intending to use such property or services in the performance of a construction contract with a designated exempt entity shall purchase the property or services from a retailer exempt from tax if the property or services are subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the designated exempt entity.

c. The fabricated cost, as defined in rule 701—219.6(423), of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if an exemption certificate is received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer’s consumption of building materials, supplies, equipment, or services used in the performance of a construction contract for purposes other than

incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for the exemption described by this rule.

219.23(5) Refunds. A designated exempt entity that does not complete the registration process in order to provide exemption certificates to contractors, subcontractors, builders, or manufacturers in advance of its construction project may request a refund of sales tax the designated exempt entity paid to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers should provide the designated exempt entity with completed Iowa Contractor's Statement forms. The designated exempt entity shall then submit a Construction Contract Claim for Refund form and all accompanying Iowa Contractor's Statement forms to the department.

This rule is intended to implement Iowa Code sections 423.3(80) and 423.4(1).
[ARC 6842C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 423.1(42), 423.2(1)“b” and “c,” 423.2(6), 423.3(37), 423.3(64), 423.3(85), and 423.5(2).

[Filed 12/29/04, Notice 11/24/04—published 1/19/05, effective 2/23/05]

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[Filed ARC 2349C (Amended Notice ARC 2239C, IAB 11/11/15; Notice ARC 2178C, IAB 9/30/15),
IAB 1/6/16, effective 2/10/16]¹

[Filed ARC 6704C (Notice ARC 6577C, IAB 10/5/22), IAB 11/30/22, effective 1/4/23]

[Filed ARC 6842C (Notice ARC 6611C, IAB 11/2/22), IAB 2/8/23, effective 3/15/23]

¹ Amendments to 219.11, 219.12 and 219.13(3) (ARC 2349C, Items 4 to 6) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

CHAPTER 262
ADMINISTRATION OF MARIJUANA AND
CONTROLLED SUBSTANCES STAMP TAX

[Prior to 9/7/22, see Revenue Department[701] Ch 91]

701—262.1(453B) Marijuana and controlled substances stamp tax. Iowa Code chapter 453B imposes a tax on “dealers” who possess, distribute, or offer to sell “taxable substances” as defined therein. The taxes imposed by Iowa Code chapter 453B are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer. Payment of the tax is evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance. [ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—262.2(453B) Sales of stamps. The director or the director’s authorized representative shall offer for sale to members of the public, during normal business hours, stamps which are capable of being affixed to taxable substances. The stamps shall be sold at the Hoover State Office Building, First Floor, Des Moines, Iowa, and at other locations as may be designated by the director.

The director shall offer for sale four different stamps: (1) a stamp for a substance consisting of or containing marijuana, (2) a stamp for taxable substances other than marijuana which are sold by weight, (3) a stamp for taxable substances other than marijuana which are not sold by weight, and (4) a stamp for each unprocessed marijuana plant. Each package or container which contains a taxable substance must have a stamp affixed to it. The stamps will be issued in denominations requested by the purchaser so long as the minimum purchase price for a single stamp purchase transaction is \$215 or more. In addition, the denomination of individual stamps cannot be less than the price for ten dosage units, multiples of ten dosage units, one whole gram, or multiples of one gram even if the stamp will be affixed to a package containing less than ten dosage units or multiples thereof, or only a portion of one gram or multiples thereof.

The director will accept payment for stamps in the form of cash, cashier’s check, or money order. Payment may not be made by personal check.

The stamps are valid for a period of six months from the date of issuance, and the stamps shall contain a statement that the stamps expire after six months from the date of issue. A stamp is “unused” and expires if it has not been affixed to taxable substances within six months of the date of issue.

Stamps may be purchased in person or by mail. Persons (including dealers) purchasing stamps are not required to provide identification such as their name or address when purchasing stamps. Neither the director nor any employee of the department shall reveal any information obtained from a stamp purchaser, nor shall information obtained from a stamp purchaser in the course of purchasing stamps be used against the stamp purchaser in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the stamp purchaser against whom a tax was assessed.

[ARC 7727B, IAB 4/22/09, effective 5/27/09; ARC 6508C, IAB 9/7/22, effective 10/12/22; ARC 6872C, IAB 2/8/23, effective 3/15/23]

701—262.3(453B) Refunds pertaining to unused stamps. At any time up to 30 days after the expiration date as indicated on the stamp, any unused stamp may be returned to the department and a refund requested in accordance with Iowa Code section 422.73(1) and rules promulgated thereunder.

Refund information is confidential. Persons seeking a refund for an unused stamp must provide a name in which a refund can be made. However, neither the director nor any employee of the department shall reveal any information obtained from a refund claimant; nor shall information obtained from a refund claimant in the course of a refund claim for an unused stamp be used against the refund claimant in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes under this chapter from the refund claimant against whom a tax was assessed or involving a counterfeit taxable substance tax stamp. If granted, the refund in the form of a warrant may, at the request of the refund claimant, either be picked up in person from the department at the

Hoover State Office Building, Des Moines, Iowa, or sent by mail to an address designated by the refund claimant.

[**ARC 7727B**, IAB 4/22/09, effective 5/27/09; **ARC 6508C**, IAB 9/7/22, effective 10/12/22]

These rules are intended to implement Iowa Code chapter 453B.

[Filed 12/20/90, Notice 11/14/90—published 1/9/91, effective 2/13/91]

[Filed ARC 7727B (Notice ARC 7593B, IAB 2/25/09), IAB 4/22/09, effective 5/27/09]

[Filed ARC 6508C (Notice ARC 6400C, IAB 7/13/22), IAB 9/7/22, effective 10/12/22]

[Filed ARC 6872C (Notice ARC 6748C, IAB 12/14/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 286

Reserved

CHAPTER 287

FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN,
HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC,
ORTHOTIC OR ORTHOPEDIC DEVICES

[Prior to 12/17/86, Revenue Department[730]]

[Prior to 11/2/22, see Revenue Department[701] Ch 20]

Rescinded **ARC 6842C**, IAB 2/8/23, effective 3/15/23

DIVISION III
UNIFORM COMMERCIAL CODE
CHAPTER 30
UNIFORM COMMERCIAL CODE
[Prior to 7/13/88, see Secretary of State [750], Ch 1]

721—30.1(554) General provisions.

30.1(1) Policy statement. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to these rules, the filing officer does none of the following:

- a. Determine the legal sufficiency or insufficiency of a document.
- b. Determine that a security interest in collateral exists or does not exist.
- c. Determine that information in the document is correct or incorrect, in whole or in part.
- d. Create a presumption that information in the document is correct or incorrect, in whole or in part.

30.1(2) Definitions. The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

“*Active*” means a UCC record that has not reached the one-year anniversary of its lapse date.

“*Amendment*” means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.

“*Assignment*” means an amendment that purports to reflect an assignment of all or a part of a secured party’s power to authorize an amendment to a financing statement.

“*Continuation*” means an amendment that purports to continue the effectiveness of a financing statement.

“*Correction statement*” means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.

“*File number*” means the unique identifying information assigned to an initial financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer’s information management system. The filing number bears no relation to the time of filing and is not an indicator of priority.

“*Filing office*” and “*filing officer*” mean the office of the secretary of state. The address of the office is Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa 50319.

“*Financing statement*” means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

“*Inactive*” means a UCC record that has reached the first anniversary of its lapse date.

“*Individual*” means a human being, or a decedent in the case of a debtor that is such decedent’s estate.

“*Initial financing statement*” means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by 2000 Iowa Acts, chapter 1149, sections 83, 85, and 89.

“*Organization*” means a legal person who is not an individual as defined above.

“*Remitter*” means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. “*Remitter*” does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer’s representative in the filing process.

“*Secured party of record*” means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 2000 Iowa Acts, chapter 1149, section 85, subsection 1, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides

the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 2000 Iowa Acts, chapter 1149, section 85, subsection 2, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

“*Termination*” means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

“*UCC*” means the Uniform Commercial Code as adopted in this state and in effect from time to time.

“*UCC document*” means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement. The word “document” in the term “UCC document” shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (NOTE: This definition is used for the purpose of these rules only. The use of the term “UCC document” in these rules has no relation to the definition of the term “document” in 2000 Iowa Acts, chapter 1149, section 2, subsection 1, paragraph “*ad.*”)

30.1(3) *Singular and plural forms.* Singular nouns shall include the plural form, and plural nouns shall include the singular form, unless the context otherwise requires.

30.1(4) *Place to file.* The filing office is the office for filing UCC documents relating to all types of collateral except for timber to be cut, as-extracted collateral (2000 Iowa Acts, chapter 1149, section 2, subsection 1, paragraph “*f*”) and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. Regardless of the nature of the collateral, the filing office is the office for filing all UCC documents where the debtor is a transmitting utility.

30.1(5) *Filing office identification.* In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its Internet and other electronic “addresses” through usual and customary means.

a. On-line information service. The filing officer offers on-line information services at www.sos.state.ia.us.

b. Electronic mail. Electronic mail cannot be used for filing UCC documents or for requesting searches of the records of financing statements.

30.1(6) *Office hours.* Although the filing office maintains regular office hours (8 a.m. to 4:30 p.m. Monday through Friday, except holidays), it receives transmissions electronically and by telefacsimile 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

30.1(7) *UCC document delivery.* UCC documents may be tendered for filing at the filing office as follows:

a. Personal delivery at the filing office’s street address. The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

b. Courier delivery at the filing office’s street address. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

c. Postal service delivery to the filing office’s mailing address. The file time for a UCC document delivered by this method is the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

d. Telefacsimile delivery to the filing office's fax filing telephone number. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

In order for delivery of UCC documents by telefacsimile to be accepted, remitter must have a preapproved charge account as provided in 30.1(11)“d” or an acceptable credit card as provided by 30.1(11)“e.”

e. Electronic filing. UCC documents may be transmitted electronically using the XML standard approved by the International Association of Corporation Administrators as described in 30.3(3). UCC documents may also be transmitted electronically through on-line entry as described in 30.3(4). The file time for a UCC document delivered by this method is the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

30.1(8) Search request delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC documents may be delivered to the filing office, except as provided in 30.1(7)“e.” Requirements concerning search requests are set forth in 30.5(2). UCC search requests upon a debtor named on an initial financing statement may be made by an appropriate indication on the face of the initial financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the initial financing statement.

30.1(9) Approved forms. Forms for UCC documents that conform to the requirements of this rule will be accepted by the filing office. Other forms will not be accepted by the filing office.

a. Approved forms. Only those forms approved for the relevant UCC document by the International Association of Corporation Administrators (the UCC National Forms) will be acceptable. Copies of these forms are available on the secretary of state's website at www.sos.state.ia.us or by request to the secretary of state's office.

NOTE: The debtor's taxpayer identification number (TAX ID #), social security number (SSN), and employer identification number (EIN) are not required, and will be readily available to the public if entered on UCC documents.

b. Form—UCC search. The information request form approved by the International Association of Corporation Administrators will be acceptable. Other request forms will also be acceptable, provided they contain the information required by 30.5(2).

c. Electronic filings. A UCC document transmitted electronically pursuant to the International Association of Corporation Administrators' XML standard and the procedures set forth in 30.3(3) or pursuant to on-line data entry procedures set forth in 30.3(4) will be acceptable.

30.1(10) Filing fees.

a. Filing fee. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format (including faxes) is \$10. If there are additional pages, the fee is \$20. But the fee for filing and indexing a UCC document communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be \$5.

b. UCC search fee. The fee for a UCC search request communicated verbally, on paper or in a paper-based format is \$5.

c. UCC search—copies. The fee for paper copies of UCC documents is \$1 per page.

30.1(11) Methods of payment. Filing fees and fees for public records services rendered by the secretary of state may be paid to the secretary of state by the following methods.

a. Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

b. Checks. Checks made payable to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

c. Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

d. Accounts receivable. Payment for services shall be in accordance with 721—2.3(17A).

e. Credit card. The filing office may accept payments using credit cards issued by approved credit card issuers.

30.1(12) Overpayment and underpayment policies.

a. Overpayment. The filing officer shall refund the amount of an overpayment exceeding \$10 to the remitter. The filing officer shall refund an overpayment of \$10 or less only upon the written request of the remitter.

b. Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall return the document to the remitter as provided in 30.2(5). A refund of a partial payment may be included with the document or delivered under separate cover.

30.1(13) Public records services. Public records services are provided on a nondiscriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

a. Individually identified documents. Copies of individually identified UCC documents are available in the following forms.

- (1) Paper.
- (2) TIF files.

b. Bulk copies of documents. Bulk copies of UCC documents are available in a TIF format on CD-ROM or DVD.

c. Data from the information management system. A list of available data elements from the UCC information management system and the file layout of the data elements are available from the filing officer upon request. Data from the information management system is available as follows.

(1) Full extract. A bulk data extract of information from the UCC information management system is available on a weekly basis.

(2) Format. Extracts from the UCC information management system are available via downloads from the filing office or CD-ROM.

d. Direct on-line services. On-line services make UCC data and images available.

30.1(14) Fees for public records services. Fees for public records services are established as follows.

a. Paper copies of individual documents.

- (1) Regular delivery method—\$1 per page.
- (2) Fax delivery—\$2 per page.

b. Bulk copies of documents.

- (1) Subscription basis—4 cents per page plus \$25 per week (delivered on CD-ROM).
- (2) Document image master file—4 cents per document.

c. Data from the information management system—full extract.

- (1) Download—\$300.
- (2) CD-ROM—\$325.

30.1(15) New practices and technologies. The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical or other technologies and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based Article 9 filing system utilizing any of such technologies.

[ARC 3467C, IAB 11/22/17, effective 12/31/17; ARC 6887C, IAB 2/8/23, effective 3/15/23]

721—30.2(554) Acceptance and refusal of documents.

30.2(1) Duty to file. Provided that there is no ground to refuse acceptance of the document under 30.2(2), a UCC document is filed upon its receipt by the filing officer with the filing fee, and the

filing officer shall promptly assign a file number to the UCC document and index it in the information management system.

30.2(2) *Grounds for refusal of UCC document.* The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

a. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

b. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number (if it has one) or a statement that it does not have one.

c. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address, and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

d. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

e. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by 2000 Iowa Acts, chapter 1149, sections 83, 85, and 89, is an initial financing statement.

f. Timeliness of continuation. A continuation shall be refused if it is not received during the six-month period concluding on the day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

g. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in 30.1(11).

h. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

i. XML refusal. UCC documents communicated by XML may be refused as provided in 30.3(3) for reasons not applicable to other communications methods.

30.2(3) *Grounds not warranting refusal.* The sole grounds for the filing officer's refusal to accept a UCC document for filing are enumerated in 30.2(2). The following are examples of defects that do

not constitute grounds for refusal to accept a document. They are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

a. Errors. The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

b. Incorrect names.

(1) The UCC document appears to identify a debtor incorrectly.

(2) The UCC document appears to identify a secured party or a secured party of record incorrectly.

c. Extraneous information. The UCC document contains additional or extraneous information of any kind.

d. Insufficient information. The UCC document contains less than the information required by Article 9 of the UCC, provided that the document contains the information required in 30.2(2) “a” through 30.2(2) “e.”

NOTE: The debtor’s taxpayer identification number (TAX ID #), social security number (SSN), and employer identification number (EIN) are not required, and will be readily available to the public if entered on UCC documents.

e. Collateral description. The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

f. Excess fee. The document is accompanied by funds in excess of the full filing fee.

30.2(4) Time limit. The filing officer shall determine whether criteria exist to refuse acceptance of a UCC document for filing not later than the second business day after the date the document would have been filed had it been accepted for filing and shall index a UCC document not so refused within the same time period.

30.2(5) Procedure upon refusal. If the filing officer finds grounds under 30.2(2) to refuse acceptance of a UCC document, the filing officer shall return the document, if written, to the remitter and will refund the filing fee. The filing office shall send a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document) and a brief description of the reason for refusal to accept the document under 30.2(2). The notice shall be sent to a secured party or the remitter as provided in 30.4(2) “e” no later than the second business day after the filing office receives the document. The refund may be delivered with the notice or under separate cover.

30.2(6) Acknowledgment.

a. At the request of a filer or remitter who files a paper or paper-based UCC document, the filing officer shall either:

(1) Send to said filer or remitter an image of the record of the UCC document showing the file number assigned to it and the date and time of filing; or

(2) If such filer or remitter provides a copy of such UCC document, note the file number and the date and time of filing on the copy and deliver or send it to said filer or remitter.

b. For UCC documents not filed in paper or paper-based form, the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date and time of filing.

30.2(7) Other notices. Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. **THE RESPONSIBILITY FOR THE LEGAL EFFECTIVENESS OF FILING RESTS WITH FILERS AND REMITTERS AND THE FILING OFFICE BEARS NO RESPONSIBILITY FOR SUCH EFFECTIVENESS.**

30.2(8) Refusal errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused under 30.2(2), the filing officer will file the UCC document as provided in these rules with a filing date and time assigned when such filing would have occurred had it not been wrongfully rejected. The filing officer will also file a statement (and such demonstration of error shall constitute the secured party’s authorization to do so)

that states that the effective date and time of filing is the date and time the UCC document was originally tendered for filing, and that sets forth such date and time.

721—30.3(554) UCC information management system.

30.3(1) Policy statement. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which are active. This rule describes the UCC information management system.

30.3(2) General provisions—UCC information management system.

a. Primary data elements. The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

1. Each initial financing statement is identified by its file number as defined in 30.1(2). Identification of the initial financing statement is stamped on written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

2. A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of financing statement. In the information management system, each financing statement has a status of active or inactive.

(6) Page count. The total number of pages in a UCC document is maintained in the information management system.

(7) Lapse indicator. An indicator is maintained by which the information management system identifies whether a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in 30.4(5).

b. Names of debtors who are individuals. For the purpose of this paragraph, “individual” means a human being, or a decedent in the case of a debtor that is such decedent’s estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.

(1) Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., “Cher”) in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer’s designations.

(2) Titles and prefixes before names. Titles and prefixes, such as “doctor,” “reverend,” “Mr.,” and “Ms.,” should not be entered in the UCC information management system. However, as provided in 30.4(8), when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

(3) Titles and suffixes after names. Titles or indications of status such as “M.D.” and “esquire” are not part of an individual’s name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as “senior,” “junior,” “I,” “II,” and “III,” are appropriate.

In either case, as provided in 30.4(8), the suffixes will be entered into the information management system exactly as received.

(4) Truncation—individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields, except for on-line filing (30.3(4)“b”), are as follows.

1. First name: 50 characters.
2. Middle name: 50 characters.
3. Last name: 50 characters.
4. Suffix: 15 characters.

c. Names of debtors that are organizations. This rule applies to the name of an organization that is a debtor or a secured party on a UCC document.

(1) Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

(2) Truncation—organization names. The organization name field in the UCC database is fixed in length. The maximum length, except for on-line filing (30.3(4)“b”), is 100 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

d. Estates. Although they are not human beings, estates are treated as if the decedent were the debtor under 30.3(2)“b.”

e. Trusts. If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor’s name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor, and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If other information is included in, or as part of, the name of the debtor, the information will be entered as if it were a part of the name under 30.4(8) and 30.4(9).

f. Initial financing statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

g. Amendment. Upon the filing of an amendment, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

1. Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

2. Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC documents that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

3. Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

4. Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except that the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

5. Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

6. Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

7. Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

h. Assignment of powers of secured party of record.

(1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

i. Continuation.

(1) Continuation of lapse date. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

(2) Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

j. Termination.

(1) Status of parties. The filing of a termination shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.

k. Correction statement.

(1) Status of parties. The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.

l. Procedure upon lapse. If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date, but no action is then taken by the filing office.

On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

30.3(3) XML documents.

a. Definitions. For the purpose of rules relating to the electronic transmission of UCC documents, the following terms shall have the meaning provided in this rule.

“XML” means extensible markup language.

“XML document” means a UCC document transmitted from a remitter to the filing officer by XML techniques authorized under this rule.

b. XML authorized. A remitter may be authorized for XML transmission upon the written authorization of the filing officer. A request to be authorized to transmit XML documents shall be in writing and delivered to the filing officer. Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the requirements for XML transmission, including format, address for transmission, and other necessary specifications.

(1) The filing officer shall authorize a remitter to engage in XML transmissions if:

1. The remitter holds an account for the billing of fees by the filing officer,

2. The remitter has entered into an agreement, in form and substance satisfactory to the filing officer, with the filing office, and

3. The filing officer determines, after appropriate testing of transmissions in accordance with the filing officer’s specifications, that the remitter is capable of transmitting XML documents in a manner that permits the filing officer to receive, index, and retrieve the XML documents.

(2) The filing officer may suspend or revoke the authorization when, in the filing officer’s sole discretion, it is determined that a remitter’s transmissions are incompatible with the filing officer’s XML system.

c. IACA standard adopted. The XML format for filing a UCC document, as adopted by the International Association of Corporation Administrators and in effect from time to time, is adopted in this state as a format for electronic transmission of UCC documents, although the filing officer shall, periodically and at the request of an authorized XML remitter, identify which versions and releases of the XML format are then in use by and acceptable to the filing office.

d. Implementation guide. The filing office publishes an implementation guide that prescribes in further detail the use of the XML format in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth in 30.1(2) above.

30.3(4) Direct on-line filing and search procedures.

a. Direct on-line filing and search services are available to any person with Internet access to the UCC website. On-line filing services require a preapproved account, in accordance with 30.1(11)“d.”

b. Document filing procedures. Initial financing statements and amendments may be filed via the UCC website, which allows for entry of information required on the approved UCC forms specified in 30.1(9). The on-line filing procedure does not allow for the maximum length of characters as defined in 30.3(2)“b”(4) and 30.3(2)“c.” Therefore, on-line filing should be used only if the filer is able to key all information without truncation. A record which is created by the filer in this manner is subject to all of the provisions of the UCC, as if it were a paper document submitted to the filing office. However, attachments may not be submitted. Filing instructions are provided on the website.

c. Search request procedures. A certified search naming a particular debtor may be obtained via the UCC website. A request that is created by the filer in this manner is subject to all of the provisions of the UCC as if it were a paper search request submitted to the filing office. Images of individual financing statements may be obtained on line. Instructions are provided on the website.

721—30.4(554) Filing and data entry procedures.

30.4(1) Policy statement. This rule describes the filing procedures of the filing officer upon and after receipt of a UCC document. Except as provided in these rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who

create reports in response to search requests type search criteria exactly as set forth on the search request. No effort is made to detect or correct errors of any kind.

30.4(2) Document indexing and other procedures before archiving.

a. Date and time stamp. The date and time of receipt are noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system.

b. Cash management. Transactions necessary to payment of the filing fee are performed.

c. Document review. The filing office determines whether a ground exists to refuse the document under 30.2(2).

d. File stamp. If there is no ground for refusal of the document, the document is stamped or deemed filed and a unique identification number and the filing date are stamped on the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

e. Correspondence.

(1) Acknowledgment of filing. If there is no ground for refusal of the document, an acknowledgment of filing is prepared as provided in 30.2(6) and communicated as follows:

1. UCC document tendered in person. Acknowledgment of filing is given to the remitter by personal delivery or sent by regular mail to the remitter or the secured party (or the first secured party if there is more than one) named on the UCC document.

2. UCC document tendered by courier or postal service delivery. Acknowledgment of filing is sent by regular mail to the remitter or to the secured party (or the first secured party if there is more than one).

3. UCC document tendered by telefacsimile delivery. Acknowledgment of filing is sent by regular mail (or, if requested, by telefacsimile) to the remitter or to the secured party (or the first secured party if there is more than one).

4. UCC document transmitted electronically using XML standard. Acknowledgment of filing is returned electronically.

5. UCC document transmitted by on-line entry. Acknowledgment of filing is returned electronically.

(2) Notice of refusal. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in 30.2(5) and communicated as follows:

1. UCC document tendered in person. Notice of refusal is given to the remitter by personal delivery or sent by regular mail to the remitter or the secured party (or the first secured party if there is more than one) named on the UCC document.

2. UCC document tendered by courier or postal service delivery. Notice of refusal is sent by regular mail to the remitter or to the secured party (or the first secured party if there is more than one).

3. UCC document tendered by telefacsimile delivery. Notice of refusal is sent by regular mail (or, if requested, by telefacsimile) to the remitter or to the secured party (or the first secured party if there is more than one).

4. UCC document transmitted electronically using XML standard. Notice of refusal is returned electronically.

5. UCC document transmitted by on-line entry. Notice of refusal is returned electronically.

f. Data entry. Data entry and indexing functions are performed as described in this rule.

30.4(3) Filing date. The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not open on that date, the filing date is the next date the filing office is open, except that, in each case, UCC documents received after 4:30 p.m. shall be deemed received on the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after the filing date.

30.4(4) Filing time. The filing time of a UCC document is determined as provided in 30.1(7).

30.4(5) Lapse date and time. A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month

as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth year following the year of the filing date.

30.4(6) *Errors of the filing officer.* The filing office may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing officer shall proceed as follows: A record relating to the relevant initial financing statement will be placed in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

30.4(7) *Errors other than filing office errors.* An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by a correction statement.

30.4(8) *Data entry of names—designated fields.* A filing should designate whether a name is that of an individual or an organization and, if an individual, also designate the first, middle and last names and any suffix. With regard to designated fields, the following shall apply.

a. Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

b. Individual names. On the form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

c. Designated fields required. The filing office specifies in 30.1(9) the use of forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help ensure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through direct data entry or through XML will be required to use designated name fields.

30.4(9) *Data entry of names—no designated fields.* A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization will be refused by the filing office.

30.4(10) *Verification of data entry.* The filing officer uses the following procedures to verify the accuracy of data entry tasks. Double key entry is employed for data entered in the following fields.

1. Time and date of filing.
2. Document identification number.
3. Document type.
4. Debtor name fields.
5. City address of debtor.

30.4(11) *Initial financing statement.* A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time of filing.

a. The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each debtor name and city is included in the searchable index and not removed until one year after the financing statement lapses.

b. The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.

c. The record is indexed according to the name of the debtor(s) and is maintained for public inspection.

d. A lapse date is established for the financing statement and the lapse date is maintained as part of the record, unless the initial financing statement indicates that it is filed against a transmitting utility.

30.4(12) Amendment. A record is created for the amendment that bears the file number for the amendment and the date and time of filing.

a. The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.

b. The name and address of each additional debtor and secured parties are entered into the UCC information management system in the record of the financing statement. Each additional debtor name and city is added to the searchable index and not removed until one year after the financing statement lapses.

c. If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

30.4(13) Correction statement. A record is created for the correction statement that bears the file number for the correction statement and the date and time of filing. The record of the correction statement is associated with the record of the related initial financing statement in a manner that causes the correction statement to be retrievable each time a record of the financing statement is retrieved.

30.4(14) Global filings.

a. The filing officer may accept for filing a single UCC document for the purpose of amending more than one financing statement, for one or both of the following purposes:

- (1) Amendment to change secured party name;
- (2) Amendment to change secured party address.

b. A blanket filing shall consist of a written document describing the requested amendment on a form approved by the filing office, and a machine-readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of blanket filing specifications is available from the filing officer upon request. Acceptance of a blanket filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

30.4(15) Archives—general. This subrule relates to the maintenance of inactive financing statements and the ability of those archives to be searched.

a. Paper UCC documents.

- (1) Storage. Paper UCC documents are scanned into the UCC information management system.
- (2) Retention. Paper is not retained.

b. Databases. The UCC information management system is backed up to magnetic tape every business day.

30.4(16) Archives—data retention. Data in the UCC information management system relating to financing statements that have lapsed is retained for at least five years from the date of lapse.

30.4(17) Archival searches. Archival searches may be available through arrangements with the filing office in its sole discretion.

30.4(18) Notice of bankruptcy. The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, financing statements will lapse as scheduled unless properly continued.

721—30.5(554) Search requests and reports.

30.5(1) General requirements. The filing officer maintains for public inspection a searchable index for all records of active UCC documents that provides for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement to which the record relates and which associates with one another each initial financing statement and each filed UCC document relating to the initial financing statement.

30.5(2) Search requests. Search requests shall contain the following information.

a. Name searched. A search request should set forth the full correct name of a debtor or the name variant desired to be searched and must specify whether the debtor is an individual or an organization.

(1) Individual. The full name of an individual shall consist of a first name, a middle name or initial, and a last name, although a search request may be submitted with no middle name or initial and, if only a single name is presented (e.g., “Cher”), it will be treated as a last name, and a search will disclose only those UCC documents where only the last name was entered.

(2) Organization. The full name of an organization shall consist of the name of the organization as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

b. Requesting party. The name and address of the person to whom the search report is to be sent, if applicable.

c. Fee. The appropriate fee shall be enclosed, payable by a method described in 30.1(11).

d. Search request with filing. If a filer requests a search at the time a UCC document is filed, by checking the box on the form set forth in 30.1(9) “a,” the name to be searched will be the debtor name as set forth on the form, the requesting party will be the remitter of the UCC document, and the search request will be deemed to request a search that would be effective to retrieve all financing statements filed on or prior to the date the UCC document is filed.

30.5(3) Optional information. A UCC search request may contain any of the following information.

a. A request that copies of documents referred to in the report be included with the report. The request may limit the copies requested by limiting them by reference to the address of the debtor, the city of the debtor, the date of filing (or a range of filing dates) or the identity of the secured party(ies) of record on the financing statements located by the related search.

b. A request that the search of a debtor name be limited to debtors in a particular city. A report created by the filing officer in response to such a request shall contain the following statement:

“A search limited to a particular city may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search.”

c. Instructions on the mode of delivery requested, if other than by ordinary mail, which request will be honored if the requested mode is then made available by the filing office.

30.5(4) Rules applied to search requests. Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search. Human judgment does not play a role in determining the results of the search. Only the following rules are applied to conduct searches.

a. There is no limit to the number of matches that may be returned in response to the search criteria.

b. No distinction is made between uppercase and lowercase letters.

c. Punctuation marks and accents are disregarded.

d. Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the “Ending Noise Words” list as promulgated by the International Association of Corporation Administrators, and adopted from time to time, are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

e. The word “the” at the beginning of the search criteria is disregarded.

f. All spaces are disregarded.

g. For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for “John A. Smith” would cause the search to retrieve all filings against all individual debtors with “John” as the first name, “Smith” as the last name, and with the initial “A” or any name beginning with “A” in the middle name field. If the search request were for “John Smith” (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with “John” as the first name, “Smith” as the last name and with any name or initial or no name or initial in the middle name field.

h. After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC

information management system, the search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested, as modified.

30.5(5) Search responses. Reports created in response to a search request shall include the following.

a. Filing officer. Identification of the filing officer and the certification of the filing officer required by the UCC.

b. Report date. The date the report was generated.

c. Name searched. Identification of the name searched.

d. Certification date. The certification date applicable to the report; i.e., the date and time through which the search is effective and reveals all relevant UCC documents filed on or prior to that date.

e. Identification of initial financing statements. Identification of each unexpired (or active, if requested) initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

f. History of financing statement. For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or prior to the certification date.

g. Copies. Copies of all UCC documents revealed by the search and requested by the searcher.

721—30.6(554) Other notices of liens.

30.6(1) Policy statement. The purpose of this rule is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC documents and that are included on request with the reports described in 30.5(4) and 30.5(5).

30.6(2) Records of liens maintained by the filing office which are created pursuant to statutes other than the UCC are maintained in the information management system and indexed and searched in the same manner under these rules.

These rules are intended to implement Iowa Code chapters 17A and 554 and 2017 Iowa Acts, Senate File 516, section 23.

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DIVISION IV
CORPORATIONS
CHAPTER 40
CORPORATIONS

[Prior to 7/13/88, see Secretary of State[750] Ch 2]

721—40.1(490,499,504A) Filing of documents. Documents pertaining to profit corporations, nonprofit corporations, and cooperative associations shall be delivered for filing to the office of Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319.

40.1(1) A copy of a signature, however made, is acceptable with regard to documents delivered to the secretary of state for filing pursuant to Iowa Code chapter 490.

40.1(2) A document delivered to the secretary of state for filing pursuant to the Iowa business corporation Act, Iowa Code chapter 490, may be delivered by telecopier to (515)242-5953.

40.1(3) A document delivered by telecopier may be delivered at any time of day. The date and time of receipt printed on the document by the telecopier constitutes the date and time endorsement required by Iowa Code section 490.125(2).

40.1(4) A document delivered by telecopier shall be printed on paper measuring 8½" by 11", unless a copy of a larger document, reduced to 8½" by 11" paper, is acceptable to the filing party. The document received by the secretary of state via telecopier shall constitute the copy that is filed and returned to the corporation pursuant to Iowa Code section 490.125(2).

40.1(5) A document delivered by telecopier shall be accompanied by a cover sheet that provides the name, address, and telephone number of the filing party, and instructions as to the manner by which the filing fee will be paid. The filing fee may be billed to an account maintained by the filing party pursuant to rule 721—2.3(17A). The filing fee may be paid by any other means authorized by the secretary of state.

40.1(6) If a telecopier is used to deliver a document that is subject to the multiple copy requirement of Iowa Code section 490.130, the additional copy or copies shall be delivered by telecopier contemporaneously with the copy of the document to be filed.

40.1(7) A document delivered by telecopier for filing may be rejected if the print quality of the document is deemed by agency personnel to be unacceptable for microfilming purposes. The secretary of state will notify the filing party by telephone or regular mail of the rejection of a document pursuant to this subrule. The secretary of state will accept for filing the original copy of the document, effective on the date of the transmission by telecopier, if the original document is received in the office of the secretary of state within ten days of date of the notification of the rejection.

This rule is intended to implement Iowa Code chapter 490.

721—40.2(490,499,504A) Reinstatement of corporations.

40.2(1) A corporation subject to Iowa Code chapter 490 that was administratively dissolved after July 1, 1992, and prior to July 1, 1993, may reinstate pursuant to section 490.1422 prior to the expiration of two years from the date of the administrative dissolution, or prior to July 1, 1995, whichever occurs first.

40.2(2) A cooperative association subject to Iowa Code chapter 499 that forfeited its corporate rights under section 499.51 prior to July 1, 1993, may reinstate pursuant to section 499.78 prior to July 1, 1995.

40.2(3) A nonprofit corporation subject to Iowa Code chapter 504A, whose certificate of incorporation was canceled pursuant to section 504A.87 prior to July 1, 1993, and whose period for reinstatement had not expired as of July 1, 1993, may apply to the secretary of state for reinstatement pursuant to section 504A.87A prior to the expiration of five years from the date of the cancellation of the certificate of incorporation, or prior to July 1, 1995, whichever occurs first.

This rule is intended to implement Iowa Code sections 490.1422, 504A.87A, and 499.78.

721—40.3(487,490,504A) Names distinguishable upon corporate records.

40.3(1) Except as provided in these rules, a name is considered distinguishable upon the records of the secretary of state if it contains one or more different letters or numerals, or if it contains a different

sequence of letters or numerals. A single space used to divide a sequence of letters or numerals into separate words is considered to be a letter for the purpose of this subrule. Differences between singular and plural forms of words are distinguishable. Differences between numerals, Roman numerals, and words representing numerals are distinguishable. The following characters are considered as letters for the purpose of this subrule: \$ (dollar sign); + (plus sign); % (percent sign); ¢ (cent sign).

40.3(2) The following words and abbreviations, when positioned as the last word or abbreviation in the corporate name, are not considered in determining whether a name is distinguishable upon the records of the secretary of state:

1. Corporation
2. Company
3. Incorporated
4. Limited
5. Corp.
6. Co.
7. Inc.
8. Ltd.

40.3(3) The presence or absence of the words “limited partnership,” or the abbreviation “L.P.” in any limited partnership name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(4) The presence or absence of the words “professional corporation” or the abbreviation “P.C.” in the name of any professional corporation, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(5) The presence or absence of the words “registered limited liability partnership,” or the abbreviation “L.L.P.” in any limited liability partnership name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(6) The presence or absence of the words “limited liability company,” or the abbreviation “L.L.C.” or “L.C.” in any limited liability company name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(7) to 40.3(10) Reserved.

40.3(11) Differences in punctuation and special characters are not considered in determining whether a name is distinguishable upon the records of the secretary of state. Punctuation and special characters include, but are not limited to:

' (apostrophe)	[(left bracket)
] (right bracket)	: (colon)
, (comma)	— (dash)
- (hyphen)	! (exclamation point)
((left parenthesis)) (right parenthesis)
. (period)	? (question mark)
' (single quote mark)	” (double quote mark)
; (semicolon)	/ (slash)
* (asterisk)	@ (at sign)
\ (back slash)	{ (left brace)
} (right brace)	^ (caret)
= (equal sign)	> (greater than sign)
< (less than sign)	# (number sign)
~ (tilde)	_ (underline)

40.3(12) Reserved.

40.3(13) Differences in capitalization are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(14) Differences between an ampersand (&) and the word “and” are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(15) Reserved.

40.3(16) In determining whether a name is distinguishable upon the records of the secretary of state, names found in the following records will not be considered:

1. Fictitious names.
2. Assumed names of nonprofit corporations.
3. Names of corporations (profit or nonprofit) whose certificates of incorporation have been canceled.
4. Names of corporations (profit or nonprofit) whose certificates of authority have been revoked.
5. Expired or terminated assumed names.
6. Expired name reservations.
7. Expired name registrations.

This rule is intended to implement Iowa Code sections 487.102(4), 490.401, 504A.6, and 504A.67.

721—40.4(490,491,496C,497,498,499,504A) Payment and refund of fees.

40.4(1) The office of secretary of state requires a payment of all fees in full at the time of filing of any corporate document or request for copies.

40.4(2) Filing under any of the corporation or cooperative chapters may be effected only upon the receipt of the correct filing fee. Failure to include the filing fee or partial payment of the filing fee will result in the return of the filing to the sender with instructions to include the correct filing fee.

40.4(3) In the event that a filing fee overpayment is made, the amount in excess of the correct filing fee shall be returned to the filing party. No adjustment is required if the amount of overpayment is one dollar or less.

40.4(4) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 490.122, subsection 1, paragraphs “a” and “s.”

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 490.122, subsection 1, paragraphs “a” and “s,” if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the corporate entity must make a written request with the business services division of the secretary of state’s office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 490.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

40.4(5) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 504A.85, subsections 1 and 9.

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 504A.85, subsections 1 and 9, if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the corporate entity must make a written request with the business services division of the secretary of state’s office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 504A.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

721—40.5(491,496A,499,504A,548) Document to county recorder.

40.5(1) Any corporate document that is required by law to be filed in the office of the county recorder will be forwarded directly to the office of the county recorder in the county where the corporation's registered office is located.

40.5(2) Reserved.

721—40.6(548) Registration and protection of marks.

40.6(1) Classification. The following general classes of goods and services are established, but do not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon which the mark is being used which fall within different classes of goods or services.

The said classes are as follows:

Class	Title	GOODS
1	Raw or partly prepared materials	
2	Receptacles	
3	Baggage, animal equipments, portfolio and pocketbooks	
4	Abrasives and polishing materials	
5	Adhesives	
6	Chemicals and chemical compositions	
7	Cordage	
8	Smokers' articles, not including tobacco products	
9	Explosives, firearms, equipments and projectiles	
10	Fertilizers	
11	Inks and inking materials	
12	Construction materials	
13	Hardware and plumbing and steam-fitting supplies	
14	Metals and metal castings and forgings	
15	Oils and greases	
16	Paints and painters' materials	
17	Tobacco products	
18	Medicines and pharmaceutical preparations	
19	Vehicles	
20	Linoleum and oiled cloth	
21	Electrical apparatus, machines and supplies	
22	Games, toys and sporting goods	
23	Cutlery, machinery and tools, and parts thereof	
24	Laundry appliances and machines	
25	Locks and safes	
26	Measuring and scientific appliances	
27	Horological instruments	
28	Jewelry and precious-metal ware	
29	Brooms, brushes and dusters	
30	Crockery, earthenware and porcelain	
31	Filters and refrigerators	
32	Furniture and upholstery	
33	Glassware	

34	Heating, lighting and ventilating apparatus	
35	Belting, hose, machinery packing and nonmetallic tires	
36	Musical instruments and supplies	
37	Paper and stationery	
38	Prints and publications	
39	Clothing	
40	Fancy goods, furnishings and notions	
41	Canes, parasols and umbrellas	
42	Knitted, netted and textile fabrics, and substitutes thereof	
43	Thread and yarn	
44	Dental, medical and surgical appliances	
45	Soft drinks and carbonated waters	
46	Foods and ingredients of foods	
47	Wines	
48	Malt beverages and liquors	
49	Distilled alcoholic liquors	
50	Merchandise not otherwise classified	
51	Cosmetics and toilet preparations	
52	Detergents and soaps	
Class	Title	SERVICES
100	Miscellaneous	
101	Advertising and business	
102	Insurance and financial	
103	Construction and repair	
104	Communication	
105	Transportation and storage	
106	Material treatment	
107	Education and entertainment	

40.6(2) Assistance in applications. The secretary of state cannot give legal advice as to the nature and extent of the protection afforded by law nor advise as to the registrability of a specific mark except as questions may arise in connection with pending applications.

40.6(3) Incomplete or defective applications. An application will not be filed unless the application and accompanying facsimiles or specimens are in proper form, comply with the statutory requirements and are accompanied by the statutory fee. Specimens which are metal need not be submitted, a facsimile being preferable in order to avoid filing problems. Documents not filed will be returned with a statement of the reasons therefor.

40.6(4) Registration dates. The registration date is the date on which the mark is actually posted in the registration indices of the office of the secretary of state, after the application has been examined and found acceptable.

40.6(5) Form of application. The application shall be on a current form supplied by the secretary of state, be completed in the English language and plainly written or typed. If the mark or any part thereof is not in the English language, it must be accompanied by a sworn translation.

40.6(6) Withdrawal of application. Prior to actual registration of the mark, the applicant, by written request, may withdraw the application.

40.6(7) Plurality of goods in single application. A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the

goods or services be stated and the mark is used or has been actually used on or in connection with all of the goods or in connection with all of the services specified.

40.6(8) *Single class in one application.* A single application to register a mark for both goods and services or for goods or services in different classes will be rejected. Applications must be restricted to goods or services comprised in a single class.

40.6(9) *Conflicts.* Whenever application is made for registration of a mark or trade name which so resembles a mark registered in this state or a mark previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive, a conflict shall be declared to exist and registration denied.

40.6(10) *Conflicts between applications.* Conflicts between pending applications will be resolved on the basis of the claimed date of first use. The secretary of state may require affidavits and other proof of first use.

40.6(11) *Record change on automatic transfer.* In the event of mergers or consolidations of corporations, a certified copy of such documents may be accepted to transfer ownership of marks.

If the name of the owner of record of a mark is changed, and request for a change of the records is made, then written proof of such change can be made by sworn affidavit showing the manner or mode by which the change of ownership was made.

40.6(12) *Change of address.* If the registered owner of a mark changes the address set forth on the registration, then written notice of such change of address must be given to the secretary of state. Such notice must clearly identify the mark or marks involved and must request that the change of address be noted on the records of the registration on file.

721—40.7(80GA,SF2274) Revised nonprofit corporation Act fees. The following are the fees for the revised nonprofit corporation Act, 2004 Iowa Acts, Senate File 2274.

40.7(1) The secretary shall collect the following fee when the documents described below are delivered to the secretary's office for filing.

Articles of incorporation	\$20
Application for use of indistinguishable name	\$5
Application for reserved name	\$10
Notice of transfer of reserved name	\$10
Application for registered name	\$2 per month or part thereof
Application for renewal of registered name	\$20
Corporation's statement of change of registered agent or registered office or both	No Fee
Agent's statement of change of registered office for each affected corporation not to exceed a total of	No Fee
Agent's statement of resignation	No Fee
Amendment of articles of incorporation	\$10
Restatement of articles of incorporation with amendments	\$20
Articles of merger	\$20
Articles of dissolution	\$5
Articles of revocation of dissolution	\$5
Certificate of administrative dissolution	No Fee
Application for reinstatement following administrative dissolution	\$5
Certificate of reinstatement	No Fee

Certificate of judicial dissolution	No Fee
Application for certificate of authority	\$25
Application for amended certificate of authority	\$25
Application for certificate of withdrawal	\$5
Certificate of revocation of authority to transact business	No Fee
Biennial report	No Fee
Articles of correction	\$5
Application for certificate of existence or authorization	\$5
Any other document required or permitted by the Act	\$5

40.7(2) The secretary of state shall collect a fee of \$5 each time process is served on the secretary under this chapter.

40.7(3) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$1 per page for copying.
- b. \$5 per page for the certificate.

721—40.8(488,489,490) Biennial reports. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

40.8(1) A limited partnership or foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 488.210.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of credit card, cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet website is \$30. This fee must be paid by credit card or secretary of state charge account.

40.8(2) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of credit card, cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet website is \$30. This fee must be paid by credit card or secretary of state charge account.

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721—40.9(488,489,490,504) Online filing requirements. The following requirements apply to the electronic filing of documents and the certification of electronic documents. This rule applies to documents filed in conjunction with the filing requirements in Iowa Code chapters 488, 489, 490, and 504.

40.9(1) Registered agents who file documents electronically must provide an email address to the secretary of state.

a. If a registered agent does not have an email address, the agent shall provide the email address of another individual or entity designated to receive electronic correspondence on behalf of the registered agent.

b. The registered agent shall notify the secretary of state within 60 days that the email address provided in compliance with this rule has been changed or discontinued.

c. An email address disclosed in compliance with this rule shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the secretary of state.

d. The secretary of state may use email for official correspondence with an entity, except when law requires delivery by United States mail.

40.9(2) For filings requiring an online account, an applicant must follow the terms and conditions on the secretary of state's Internet website for each electronic filing.

40.9(3) All correspondence related to an electronic filing shall be handled electronically in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D.

40.9(4) Documents filed electronically shall be accompanied by the appropriate fee. This fee must be paid by check, credit card, or secretary of state charge account.

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[Filed ARC 6887C (Notice ARC 6427C, IAB 7/27/22), IAB 2/8/23, effective 3/15/23]

[◊] Two or more ARCs

CHAPTER 451
EMERGENCY VEHICLE CERTIFICATE
[Prior to 6/3/87, see Transportation Department[820]—(07,E) Ch 2]

761—451.1(321) Information. Information about certificates of designation for authorized emergency vehicles is available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3110; by email at vscusto@iowadot.us; or on the department's website at www.iowadot.gov.

This rule is intended to implement Iowa Code sections 321.2 and 321.3.
[ARC 2755C, IAB 10/12/16, effective 11/16/16; ARC 6308C, IAB 5/4/22, effective 6/8/22]

761—451.2(321) Authorized emergency vehicle certificate.

451.2(1) Application. Application for a certificate which designates a privately owned vehicle as an authorized emergency vehicle shall be submitted to the motor vehicle division in the form and manner prescribed by the department. The department shall deny an application if the applicant does not establish for the department that the vehicle will be used as an authorized emergency vehicle, as described in Iowa Code section 321.451, that the vehicle does not otherwise demonstrate necessity for the designation, or that the applicant does not meet the criteria for issuance of a certificate established by Iowa Code section 321.451.

451.2(2) Expiration. The certificate of designation expires at midnight on the thirty-first day of December five years from the year in which it was issued.

451.2(3) Limitation. In addition to the provisions of Iowa Code sections 321.231(2), 321.231(4), 321.231A, 321.324A(3A) and 321.451, a towing or recovery vehicle with a valid certificate of designation may only display illuminated emergency lights in one of the following circumstances:

- a. When the vehicle is at the scene of an emergency, which includes an incident dangerous to the public or roadside operations where increased visibility will mitigate risk of traffic hazards.
- b. When otherwise authorized by a law enforcement officer.

This rule is intended to implement Iowa Code sections 321.231, 321.231A, 321.324A(3A) and 321.451.

[ARC 2755C, IAB 10/12/16, effective 11/16/16; ARC 6308C, IAB 5/4/22, effective 6/8/22; ARC 6845C, IAB 2/8/23, effective 3/15/23]

761—451.3(17A,321) Application denial or certificate revocation.

451.3(1) The department may deny an application or revoke a certificate of designation if an applicant or certificate holder fails to comply with the applicable provisions of this chapter or Iowa Code section 321.231, 321.231A, 321.324A(3A) or 321.451; or if the certificate holder is no longer eligible for the certificate, or the certificate holder otherwise abuses the certification.

451.3(2) The department shall send notice by certified mail to a person whose certificate of designation is to be revoked. The department shall send notice by first-class mail when an application is denied. The notice shall be mailed to the person's mailing address as shown on departmental records, and the revocation or denial shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the motor vehicle division. The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation or denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.13, 321.16, 321.231, 321.231A, 321.324A(3A) and 321.451.

[ARC 2755C, IAB 10/12/16, effective 11/16/16; ARC 6308C, IAB 5/4/22, effective 6/8/22; ARC 6845C, IAB 2/8/23, effective 3/15/23]

[761—Chapter 451 appeared as Ch 2, Department of Public Safety, 1973 IDR]

[Filed 11/13/62; transferred to Department of Transportation 7/1/75]

[Filed 2/7/86, Notice 12/18/85—published 2/26/86, effective 4/2/86]

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[Filed ARC 6308C (Notice ARC 6141C, IAB 1/12/22), IAB 5/4/22, effective 6/8/22]

[Filed ARC 6845C (Notice ARC 6702C, IAB 11/30/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 625
DRIVER'S LICENSES FOR UNDERCOVER
LAW ENFORCEMENT OFFICERS

761—625.1(321) Purpose. This chapter addresses the issuance of undercover driver's licenses.

761—625.2(321) Application.

625.2(1) The application for an undercover driver's license must:

- a. Be in writing.
- b. Include a fictitious name as well as the applicant's true identity.
- c. Include a statement of need.
- d. Be signed by both the applicant and the head of the law enforcement agency employing the applicant.
- e. Be submitted to the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021.

625.2(2) All applications shall be investigated by the department. An investigation shall include, but not be limited to, a 50-state check of the fictitious name and verification of the applicant's employment with the sponsoring law enforcement agency.

625.2(3) The department shall determine if the undercover license is necessary.

625.2(4) The department shall approve or deny the application, based on the results of the investigation and the determination of necessity.

625.2(5) An applicant employed by a state or local law enforcement agency that is located in a state other than Iowa is not eligible for an undercover driver's license issued under this chapter.

[ARC 4002C, IAB 9/12/18, effective 10/17/18; ARC 6846C, IAB 2/8/23, effective 3/15/23]

761—625.3(321) Issuance.

625.3(1) To obtain an undercover license after the application is approved, the applicant must appear at the Motor Vehicle Division offices, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa, with all applicable documents necessary for the issuance of an undercover license.

625.3(2) The license will be issued with an applicable expiration date as provided in Iowa Code section 321.196. The applicant must pay all fees and meet all requirements for the class of license applied for, except that rule 761—601.5(321) is waived in accordance with the provisions in 6 CFR 37.11.

625.3(3) An undercover license may not be renewed. The department may issue a subsequent new undercover license to an applicant who submits a new application and continues to meet the requirements of rule 761—625.2(321).

[ARC 0347C, IAB 10/3/12, effective 11/7/12; ARC 4002C, IAB 9/12/18, effective 10/17/18; ARC 5205C, IAB 10/7/20, effective 11/11/20]

761—625.4(321) Renewal not permitted. Rescinded ARC 4002C, IAB 9/12/18, effective 10/17/18.

761—625.5(321) Cancellation. When the need for an undercover license no longer exists or if the licensee ceases to be employed by the sponsoring law enforcement agency, the licensee shall surrender the undercover license to the bureau of investigation and identity protection for cancellation.

[ARC 6846C, IAB 2/8/23, effective 3/15/23]

761—625.6(321) Records.

625.6(1) Applications, forms and other records of the department that establish the true identity of an applicant or licensee under this chapter are confidential public records under Iowa Code sections 22.7, 80G.3 and 321.189A. The fictitious license information itself is not confidential, except as provided in Iowa Code section 321.11.

625.6(2) The open public records of the department shall contain no information or indicator that would distinguish any undercover license issued under this chapter from any other driver's license issued by the department.

625.6(3) An undercover license issued under this chapter will appear on the driver's license record system.

[ARC 4002C, IAB 9/12/18, effective 10/17/18]

These rules are intended to implement Iowa Code sections 22.7, 80G.3, 321.189, 321.189A and 321.196 and 6 CFR Part 37.

[Filed 8/26/97, Notice 7/2/97—published 9/24/97, effective 10/29/97]

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[Filed ARC 4002C (Notice ARC 3866C, IAB 7/4/18), IAB 9/12/18, effective 10/17/18]

[Filed ARC 5205C (Notice ARC 5100C, IAB 7/29/20), IAB 10/7/20, effective 11/11/20]

[Filed ARC 6846C (Notice ARC 6703C, IAB 11/30/22), IAB 2/8/23, effective 3/15/23]

WORKERS' COMPENSATION DIVISION[876]

[Prior to 9/24/86, see Industrial Commissioner[500]. Renamed Division of Industrial Services under the "umbrella" of Employment Services Department by 1986 Iowa Acts, Senate File 2175]
 [Prior to 1/29/97 see Industrial Services Division[343]. Reorganized under "umbrella" of the Department of Workforce Development[871] by 1996 Iowa Acts, chapter 1186]
 [Prior to 7/29/98 see Industrial Services Division[873]]

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CHAPTER 1
PURPOSE AND FUNCTION

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 1]

876—1.1(86,17A) Purpose and function. The function of the division of workers' compensation of the department of workforce development is to adjudicate the rights and duties of persons provided for in Iowa Code chapters 85, 85A, 85B, 86, and 87 and these rules, and to administer and enforce the provisions of chapters 85, 85A, 85B, 86, and 87 and these rules. The indicated chapters provide for the rights and duties of persons injured in employment and the responsible employers and insurance carriers. The chapters are commonly referred to as the workers' compensation chapters of the Iowa Code. The Iowa workers' compensation commissioner is the executive head of the division of workers' compensation who serves a six-year term, appointed by the governor and confirmed by the senate. Two major sections within the division, compliance and adjudication, carry out the purpose of the division as set out by the laws of this state.

The compliance section prepares and distributes literature concerning the workers' compensation law, rates, judicial decisions, and statistics; responds to written and oral inquiries regarding the law; conducts conferences and training sessions; provides appropriate forms for use in matters under the jurisdiction of the division; establishes and monitors files arising from claims of work-related injuries and illness; and informs parties to a claim of their rights and responsibilities.

The adjudication section determines, by adjudicative means, the rights and liabilities of parties in a disputed claim by conducting hearings and rendering decisions; approving settlements in accordance with the statutes; and conducting appeals within the division.

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)725-4120 or 1-800-645-4583. The fax number is (515)281-6501. The website address is www.iowaworkcomp.gov. [ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 5042C, IAB 5/20/20, effective 6/24/20; ARC 6841C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code sections 17A.3(1) "a" and "b" and 84A.5.

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[Filed ARC 6841C (Notice ARC 6701C, IAB 11/30/22), IAB 2/8/23, effective 3/15/23]

¹ See IAB Industrial Services, Division of [343]

CHAPTER 2
GENERAL PROVISIONS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 2]

876—2.1(86) Extending time and continuances. The workers' compensation commissioner or a deputy workers' compensation commissioner may modify the time to comply with any rule for good cause.

This rule is intended to implement Iowa Code chapter 86.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.2(85,85A,85B,86,87) Applicability. When appropriate, all rules shall apply to Iowa Code chapters 85, 85A, 85B, 86 and 87.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B, 86 and 87.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.3(86,87) Representative within the state. All licensed insurers, foreign and domestic, insuring workers' compensation and all employers relieved from insurance pursuant to Iowa Code section 87.11 shall designate one or more persons geographically located within the borders of this state, which person or persons shall be knowledgeable of the Iowa workers' compensation law and rules and shall be given the authority and have the responsibility to expedite the handling of all matters within the scope of Iowa Code chapters 85, 85A, 85B, 86, and 87.

The Iowa workers' compensation commissioner shall be advised by letter of the name, address, and telephone number of each of the persons so designated. Any change in the identity, address or telephone number of the persons so designated shall be reported to the Iowa workers' compensation commissioner within ten days after such change occurs.

This rule is intended to implement Iowa Code chapters 86 and 87.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.4(85,86) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted for determining the extent of loss or percentage of impairment for permanent partial disabilities and payment of weekly compensation for permanent partial scheduled injuries under Iowa Code section 85.34(2) not involving a determination of reduction in an employee's earning capacity. Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa workers' compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the Guides to the Evaluation of Permanent Impairment, Fifth Edition, when the reduction in earning capacity for all other permanent partial and permanent total disabilities is determined.

This rule is intended to implement Iowa Code sections 85.34(2) and 86.8.

[ARC 3528C, IAB 12/20/17, effective 1/24/18]

876—2.5(85,85A,85B,86) Use of workers' compensation electronic system (WCES) for submission of filings. Electronic data interchange (EDI) information, forms, pleadings, responses, motions, briefs, and any other submissions shall be filed through the workers' compensation electronic system (WCES). The website address for WCES is www.iowaworkcomp.gov/efile. Any electronic filing that is quarantined due to a virus will not be considered received.

2.5(1) The division of workers' compensation may grant a request for waiver of the mandatory use of WCES in contested cases, pursuant to rule 876—12.4(17A).

2.5(2) Only a deputy workers' compensation commissioner or the workers' compensation commissioner can grant a request for waiver of the mandatory use of WCES in a contested case.

2.5(3) If the division of workers' compensation grants a waiver of the mandatory use of WCES in a contested case, the division of workers' compensation shall file paper documents received from the filer in WCES.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.6(85,85A,85B,86) Information to employees. An employer or its insurance carrier filing a final subsequent report of injury (SROI) with the workers' compensation commissioner (see 876—subrule 3.1(2)) shall also mail a copy of the information contained on the final subsequent report of injury to the employee at the employee's last-known address.

This rule is intended to implement Iowa Code sections 85.26, 86.8, 86.11 and 86.13.

876—2.7(86) Official record. The electronic record made and maintained by the division of workers' compensation is the official record of a contested case.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.8(86) Document requirements. Pleadings, responses to pleadings, exhibits, and transcripts submitted to the division of workers' compensation shall be scanned, attached, and filed in portable document format (pdf) or as image-on-text documents (searchable pdf). A hearing report or proposed order or proposed ruling shall be submitted as a pdf or searchable pdf. Transcripts submitted shall include an index. Filings shall not exceed 20 megabytes (MB). Documents exceeding 20 MB shall be divided and submitted as separate attachments to comply with this size limit. All filings pursuant to this rule shall be submitted via WCES unless otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner. Audio or video files shall use MP3 or MP4 format and should be submitted with a virus-scanned USB drive and shall not exceed 500 MB for each filing.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—2.9(86) Effective date of WCES rules. Rescinded ARC 6841C, IAB 2/8/23, effective 3/15/23.

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CHAPTER 3 FORMS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 3]

876—3.1(17A) Forms. The following forms are available from the division of workers' compensation for use in matters under the jurisdiction of the workers' compensation commissioner. Insurance carriers, self-insured employers, or their adjusting agents may reproduce the forms in which event the name, address, telephone number, and identification number may be imprinted. The current revision of the form must be used. Each form is identified by a form number. This form number follows each form name listed below and is used when requesting that specific form.

3.1(1) First report of injury (FROI). The FROI contains general information concerning the employee, the employer and the claimed injury. A FROI is to be filed whether or not an adjudication or admission of liability for the injury exists and is to be filed as provided in Iowa Code section 86.11 and 876—Chapter 11. The FROI is to be filed when demanded by the commissioner pursuant to Iowa Code section 86.12 and when an employer is served with an original notice and petition that alleges an injury for which a FROI has not been filed. If an original notice and petition alleges multiple injury dates, only one FROI should be filed, and the date of injury reported should be the date the reporter uses when adjusting the claim.

3.1(2) Subsequent report of injury (SROI).

a. The SROI provides for filing of notice of commencement of payments, correcting erroneous claim information, supplying additional information, denying compensability, agreeing to the weekly benefit rate and agreeing to make payments under the Workers' Compensation Act, reporting the status of a claim, or recording benefits paid. Notice of commencement of payments shall be filed within 30 days of the first payment. When liability on a claim is denied, a letter shall be sent to claimant stating reasons for denial. The SROI shall also be filed when compensation is terminated or interrupted. Medical data supporting the action taken shall be filed when temporary total disability or temporary partial disability exceeds 13 weeks or when the employee sustains a permanent disability.

b. The employer and insurance carrier who are required to file medical data shall file the medical data in WCES. The employer or insurance carrier or the employer's or insurance carrier's agent shall register in WCES to file the medical data. The filer will receive a status update for the information the filer submits based upon the status the filer selects and for which the filer is approved in WCES.

3.1(3) Form No. 2A—claim activity report. (Form No. 14-0003) Reserved.

3.1(4) Form No. 2B—supplemental information report. (Form No. 14-9999) Reserved.

3.1(5) Form No. 12—waiver on account of physical defect. (Form No. 14-0029) Reserved.

3.1(6) Form—rehabilitation referral and acknowledgment. (Form No. 309-5051) Reserved.

3.1(7) Form—original notice and petition. The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice and petition concerning application for independent medical examination—Form 100A (Form No. 14-0007); answer and order concerning application for independent medical examination—Form 100A (Form No. 14-0007A); original notice and petition concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); answer concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009A); original notice, petition concerning application for alternate medical care—Form 100C (Form No. 14-0011); answer concerning application for alternate medical care—Form 100C (Form No. 14-0011A); original notice and petition concerning application for vocational training and education—Form 100D (Form No. 14-0012); answer concerning application for vocational training and education—Form 100D (Form No. 14-0012A); original notice and petition for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); and original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017). See rule 876—4.6(85,86,17A) for further descriptions.

3.1(8) *Form—subpoena. (Form No. 14-0035)* This form is the witness subpoena, which is used to require a witness to appear and testify, and the Subpoena Duces Tecum, which is used to require a witness to appear and to bring specified books and records.

3.1(9) *Form—corporate officer exclusion. (Form No. 14-0061)* This form is the corporate officer exclusion which is used for corporate officers to reject workers' compensation or employers' liability.

3.1(10) *Form—attorney lien. (Form No. 14-0039)* Reserved.

3.1(11) *Form—application and consent order for payment of benefits. (Form No. 14-0037)* This form is the application and consent order for payment of benefits under Iowa Code section 85.21 which is used by an employer or an insurance carrier to pay weekly and medical benefits without admitting liability and to be able to seek reimbursement from another carrier or employer.

3.1(12) Reserved.

3.1(13) *Form—dispute resolution conference report. (Form No. 14-0041)* This form is the dispute resolution conference report which is used to provide information for a dispute resolution pursuant to rule 876—4.40(73GA,ch1261).

3.1(14) *Form—forms order blank. (Form No. 14-0031)* Reserved.

3.1(15) *Form—agreement for settlement. (Form No. 14-0021)* Reserved.

3.1(16) *Form—contested case settlement. (Form No. 14-0025)* Reserved.

3.1(17) *Form—authorization for release of information regarding claimants seeking workers' compensation benefits. (Form No. 14-0043)* This form is used for the release of information concerning an employee's physical or mental condition relative to a workers' compensation claim.

3.1(18) *Form No. 9—original notice and petition for commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6). (Form No. 14-0013)* This form contains data relevant to benefits paid and those to be paid by commutation when all unaccrued benefits are due. Signatures of the parties are necessary. Approval by the workers' compensation commissioner or a deputy workers' compensation commissioner is necessary. The form contains language of release.

3.1(19) *Form No. 9A—original notice and petition for partial commutation. (Form No. 14-0017)* This form contains the same data and requirements as Form No. 9. However, all remaining benefits are not commuted. No language of release is contained.

3.1(20) *Form—prehearing conference report. (Form No. 14-0049)* Reserved.

3.1(21) *Form—agreement for settlement. (Form No. 14-0021)* This form is used to file an agreement for settlement pursuant to Iowa Code section 85.35(2).

3.1(22) *Form—compromise settlement. (Form No. 14-0025)* This form is used to file a compromise settlement pursuant to Iowa Code section 85.35(3).

3.1(23) *Form—combination settlement. (Form No. 14-0159)* This form is used to file a combination settlement pursuant to Iowa Code section 85.35(4).

3.1(24) *Form—contingent settlement. (Form No. 14-0161)* This form is used to file a contingent settlement pursuant to Iowa Code section 85.35(5).

3.1(25) *Form—claimant's statement. (Form No. 14-0163)* This form is used for any type of settlement when the claimant is not represented by an attorney.

3.1(26) *Form—application to defer payment of filing fees, financial affidavit and order. (Form No. 14-0075)* This form is used to request a deferral of payment of filing fees. This form is not initially filed through WCES.

3.1(27) *Form—nonelection of workers' compensation or employers' liability coverage. (Form No. 14-0175)* This form is used for exclusion from liability coverage pursuant to Iowa Code section 87.22.

3.1(28) *Form—shorthand reporter identification form. (Form No. 14-0178)* This form is used to identify the official shorthand reporter and custodian of the notes for a hearing.

3.1(29) Form—request for waiver of the mandatory use of WCES. (Form No. 14-0176) This form is used by a self-represented party to request a waiver from those rules requiring filing in WCES and allows a party to file and serve documents in paper form.

[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

These rules are intended to implement Iowa Code section 17A.3(1)“b.”

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[◊] Two or more ARCs

¹ See IAB Industrial Services, Division of [343]

CHAPTER 4
CONTESTED CASES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 4]

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

- 4.1(1) Arbitration (Iowa Code section 86.14).
- 4.1(2) Review of award or settlement (review-reopening, Iowa Code section 86.14).
- 4.1(3) Benefits under Iowa Code section 85.27.
- 4.1(4) Death and burial benefits (Iowa Code sections 85.28, 85.29, 85.31).
- 4.1(5) Determination of dependency (Iowa Code sections 85.42, 85.43, 85.44).
- 4.1(6) Equitable apportionment (Iowa Code section 85.43).
- 4.1(7) Second injury fund (Iowa Code section 85.63 et seq.).
- 4.1(8) Vocational rehabilitation benefits (Iowa Code section 85.70(1)).
- 4.1(9) Vocational training and education (Iowa Code section 85.70(2)).
- 4.1(10) Approval of fees under Iowa Code section 86.39.
- 4.1(11) Commutation (Iowa Code section 85.45 et seq.).
- 4.1(12) Employee's examination (Iowa Code section 85.39).
- 4.1(13) Rescinded IAB 2/8/23, effective 3/15/23.
- 4.1(14) Determination of compliance with Iowa Code chapters 85, 85A, 85B, 86, and 87.
- 4.1(15) Applications for alternate medical care (Iowa Code section 85.27).
- 4.1(16) Determination of liability, reimbursement for benefits paid and recovery of interest (Iowa Code section 85.21).
- 4.1(17) Interest (Iowa Code section 85.30).
- 4.1(18) Penalty (Iowa Code section 86.13).
- 4.1(19) Application for approval of third-party settlement (Iowa Code section 85.22).
- 4.1(20) Matters that would be a contested case if there were a dispute over the existence of material facts.
- 4.1(21) Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. A person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the workers' compensation commissioner of a deputy workers' compensation commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated. The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any

time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the workers' compensation commissioner may on the workers' compensation commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. The notice of hearing may be given by ordinary mail or by WCES if the alleged noncompliant person or entity is registered in WCES and is currently participating in a contested case using WCES and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue. Following the hearing, the workers' compensation commissioner or a deputy workers' compensation commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the workers' compensation commissioner may impose sanctions in accordance with Iowa Code section 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division of the department of commerce with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

This rule is intended to implement Iowa Code chapters 85, 85A, 86 and 87.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.4(86) Request for hearing. A hearing shall not be held in proceedings under subrules 4.1(8) to 4.1(12), unless otherwise ordered or requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

This rule is intended to implement Iowa Code chapter 86.
[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.5(86) Commencement by the workers' compensation commissioner. In addition to an aggrieved party, the workers' compensation commissioner may initiate proceedings under subrule 4.1(10). The proceeding may be held before a deputy workers' compensation commissioner or the workers' compensation commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under subrule 4.1(14), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy workers' compensation commissioner concerning a specific matter.

This rule is intended to implement Iowa Code chapter 86.
[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A, Form 100B, or Form 100D of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, Form 100D, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in rule 876—4.1(85,85A,85B,86,87,17A). Form 100 is to be used for all contested case proceedings except as indicated in this rule. Form 100A is to be used for the contested case proceedings provided for in subrule 4.1(12). Form 100B is to be used for the contested case proceeding

provided for in subrule 4.1(8). Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(15) and rule 876—4.48(17A,85,86). Form 100D is to be used for the contested case proceeding provided for in rule 876—4.50(85). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, Form No. 14-0013 or Form No. 14-0017 must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), or a substantially equivalent form, which shall not be revoked until conclusion of the contested case. The claimant shall provide the patient's waivers in other forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.

A separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.

This rule is intended to implement Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.
[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.7(86,17A) Delivery of notice, orders, rulings and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by regular mail, by email or by WCES. Filing of a notice, ruling and decision in WCES is the official filing and start of any appeal or motion deadline.

This rule is intended to implement Iowa Code sections 85.3 and 17A.12.
[ARC 8013B, IAB 7/29/09, effective 9/2/09; ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.8(86) Filing of notice.

4.8(1) A contested case is commenced by filing the original notice and petition with the workers' compensation commissioner. No action shall be taken by the workers' compensation commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 876—4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

4.8(2) Filing fee.

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. The filing fee for petitions is \$125. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits under Iowa Code section 85.28; determination of dependency under Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment under Iowa Code section 85.43; second injury fund under Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits under Iowa Code section 85.70(1); vocational training and education benefits under Iowa Code section 85.70(2); approval of legal, medical and other fees under Iowa Code section 86.39; commutation under Iowa Code sections 85.45 to 85.48; employee's examination under Iowa Code section 85.39; employee's examination or sanctions under Iowa Code section 85.39; application for alternate care under Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest under Iowa Code section 85.21; interest under Iowa Code section 85.30; penalty under Iowa Code section 86.13; application for approval of third-party settlement under Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

b. A filing fee shall be required for each original notice and petition filed, as required in paragraph 4.8(2) "a." If a party overpays a filing fee, the party may receive a refund. The party who made the overpayment must request a refund before June 1 of the fiscal year in which the overpayment occurred.

c. If no filing fee is paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than required will be considered failure to pay a filing fee.

d. The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. See rule 876—4.33(86).

e. The filing fee shall be paid at the same time the petition is filed. The filing fee shall be paid electronically with a credit card, via automated clearing house (ACH), or by other electronic means as allowed by WCES, unless an order granting permission for nonelectronic payment has been issued. If an order granting permission for nonelectronic payment has been issued, the party filing the petition shall issue a check payable to the "Iowa Division of Workers' Compensation." If the payment of the filing fee is made by an account with insufficient funds or the payment is stopped, or the payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See paragraph 4.8(2) "c." Nonelectronic payment will not be accepted without an order granting permission for nonelectronic payment. The statute of limitations is not tolled if a party has requested nonelectronic payment and is awaiting an order.

f. The workers' compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers' compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers' compensation commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers' compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See paragraph 4.8(2) "c." The form for the application deferral of prepayment of fees (Form No. 14-0075) shall not be filed using WCES. The document shall be filed in paper form. If the request for deferral of fees is granted, a claim will be established in WCES. Parties to the claim shall use WCES for future filings, unless a party has been granted a waiver of the mandatory use of WCES.

g. Parties shall use the payment gateway in WCES to pay filing fees, unless an order has been issued allowing deferral of the payment of the filing fee or payment outside of WCES. In addition to the filing fee, the parties shall pay the convenience fee charged by the financial institution that is processing payment for WCES. This cost may be recoverable under rule 876—4.33(86).

This rule is intended to implement Iowa Code section 17A.12.

[ARC 7818B, IAB 6/3/09, effective 7/1/09; ARC 8013B, IAB 7/29/09, effective 9/2/09; ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.9(17A) Appearance and responses, pleadings, motions and settlements. Appearances and responses to pleadings and motions shall be made in WCES. Registration with the division of workers' compensation's WCES is required. Registration is accepted at www.iowaworkcomp.gov/efile. After a matter has been commenced and the respondent has been served with an original notice and filed an answer or appearance, subsequent filings or submissions in WCES do not require proof of service to parties of record who are registered with WCES. If a party has been granted a waiver of the mandatory use of WCES, the party shall include a proof of service for all parties of record. Attorneys will need to use the AT pin or pro hac vice pin assigned by the Iowa Supreme Court to be associated with a case in WCES. When an attorney is not representing a party, the employer or insurance carrier or the employer's or insurance carrier's agent or claimant shall register in WCES to file the settlement or medical data pursuant to 876—subrule 3.1(2). The filer will receive a status update for the information the filer submits based upon the status the filer selects when registering in WCES.

4.9(1) Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent in WCES, or if a party has been granted a waiver of the mandatory use of WCES, the respondent shall file an answer or motion within 20 days after service of the original notice and petition upon the respondent with the division of workers' compensation.

4.9(2) Motions. Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required, upon motion made by a party within 20 days after the service of the pleading on such party.

4.9(3) Pleading. Rescinded IAB 11/23/05, effective 1/1/06.

4.9(4) Time after motions attacking pleadings and special appearances. If a motion attacking a pleading is so disposed of as to require further pleading, such further pleading shall be served within ten days after notice of the action of the workers' compensation commissioner or deputy workers' compensation commissioner. If the further pleading requires a response, the response shall be filed within ten days after service of the further pleading.

4.9(5) Amendments to pleadings. A party may amend a pleading as a matter of course at any time before the party's discovery is closed, or if no order is entered closing the party's discovery, at any time before the case is assigned for hearing. Otherwise, a party may amend a pleading only by leave of the workers' compensation commissioner or deputy workers' compensation commissioner or by written consent of the adverse party. Leave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.

4.9(6) Form, submission and ruling on motions. All motions, including pre-answer motions and motions for summary judgment, shall have appended to them a concise memorandum brief and argument. All motions except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions shall have appended to them a concise memorandum brief and argument and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion or resistance.

An order may be entered consolidating any motion for ruling with the hearing of the contested case. Any party desiring a ruling on a motion prior to the hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers'

compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. All petitions involving the same claimant and employer will automatically be consolidated. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion to consolidate shall be deemed approved without an order if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion.

4.9(8) Withdrawal of counsel. Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by filing written objections and a request for a hearing to the Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309, within ten days following the date the notice was mailed or personally delivered to the client. The client's response does not need to be filed in WCES but may be mailed or delivered to the division. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

4.9(9) Requests for default. Requests or motions for default shall be as provided in Iowa Rules of Civil Procedure 1.971 to 1.977 except that entry of default shall be by order of the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.9(10) Pro hac vice. An out-of-state attorney desiring to appear pro hac vice in an Iowa division of workers' compensation case is required to access the office of professional regulation (OPR)/supreme court commissions (SCC) website, submit certain personal information to complete pertinent fields in the lawyer database, and pay a fee that will be deposited in the client security trust fund. The registration and fee payment allow the attorney to apply to appear pro hac vice in Iowa division of workers' compensation cases, subject to the limits and requirements of Iowa Court Rule 31.14, for a period of up to five years from the date of registration. Attorneys who register and pay the fee appear in the OPR/SCC database with the status of "pro hac vice." The Iowa division of workers' compensation will request from the Iowa courts that a pro hac vice number be issued and will provide that number to the out-of-state attorney for registration with WCES. The affiliated in-state attorney shall file in WCES the application to appear pro hac vice completed by the out-of-state attorney using a pleading that is substantially similar to Iowa Court Rule 31.25—Form 1.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 5042C, IAB 5/20/20, effective 6/24/20; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.10(86,87) Insurance carrier as a party. Whenever any insurance carrier shall issue a policy with a clause in substance providing that jurisdiction of the employer is jurisdiction of the insurance carrier, the insurance carrier shall be deemed a party in any action against the insured.

This rule is intended to implement Iowa Code section 87.10.

876—4.11(86) Signatures on documents and papers. All documents and papers required by these rules, the Iowa Rules of Civil Procedure as applicable, or a statutory provision shall be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa Rules of

Civil Procedure as applicable, and any statutory provision. Iowa R. Elec. P. 16.305 concerning signatures is applicable to WCES.

This rule is intended to implement Iowa Code section 17A.12.
[ARC 4568C, IAB 7/31/19, effective 7/10/19]

876—4.12(86) Service on parties. Any document or paper not delivered under rules 876—4.6(85,86,17A) and 876—4.7(86,17A) which is to be filed and seeks relief from or action against another party, or which has any significant effect on any contested case, shall be served on each party of record under rule 876—4.13(86).

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.13(86) Method of service. Except as provided in rules 876—4.6(85,86,17A) and 876—4.7(86,17A), service of all documents and papers to be served according to this chapter or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner or deputy workers' compensation commissioner. Service upon the attorney or party shall be made using WCES once a party or party's attorney has registered in WCES for the claim being contested. If a party has been granted a waiver of the mandatory use of WCES or if a party or attorney has not appeared in WCES, service upon the attorney or party shall be made by delivery of a copy or mailing a copy to the last-known address of the attorney or party or, if no address is known, by filing a copy with the division of workers' compensation. Delivery of a copy within this rule means handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. Documents that are served on a party for discovery and medical evidence under rules 876—4.14(86) and 876—4.18(17A,85,86) shall not be filed with the division of workers' compensation. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 876—4.12(86) shall be filed with the workers' compensation commissioner either before service or within a reasonable time thereafter. No deposition, notice of deposition, notice of requests for discovery, notice of responses to requests for discovery, and notice of medical records and reports required to be served by rule 876—4.17(86) shall be filed with or accepted for filing in WCES unless ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner, or its use becomes otherwise necessary in the action, in which case it shall be attached to the relevant motion or response to the motion requiring its use, or unless offered as evidence at hearing of the contested case.

This rule is intended to implement Iowa Code section 86.18.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under rule 876—4.12(86) shall be filed with the division of workers' compensation promptly and, in any event, before action is to be taken thereon by the workers' compensation commissioner or a deputy workers' compensation commissioner or any party unless a responsive pleading has been filed. Proof shall be made by filing the document in WCES when another party is registered in WCES for that claim. If a party or a party's attorney or representative is not in WCES for the claim being contested, the proof shall show the date and manner of service and may be by written acknowledgment of service, by

certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.

This rule is intended to implement Iowa Code section 86.18.

[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.16(86) Request for copy. Rescinded ARC 6841C, IAB 2/8/23, effective 3/15/23.

876—4.17(17A,85,86) Service of records and reports. Each party to a contested case shall serve all records received pursuant to a patient's waiver (Form 14-0043—authorization for release of information regarding claimants seeking workers' compensation benefits) and medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer or, if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions include physicians, physician assistants, surgeons, osteopathic physicians and surgeons, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution or other source and date of the records and reports and, if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to rule 876—4.14(86), the notice and records and reports shall not be filed with the workers' compensation commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of rule 876—4.36(86). This rule does not require a party to serve any record or report that was previously served by another party in a contested case proceeding.

Compliance with this rule does not automatically permit a record or report to be received into evidence if the record or report was not served prior to an applicable deadline established by rule or order for completing discovery or service of exhibits.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.18(17A,85,86) Medical evidence and discovery. Discovery in workers' compensation proceedings is governed by the rules of civil procedure pursuant to 876—4.35(86). Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order or rule for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.19(86) Prehearing procedure.

4.19(1) Prehearing procedure in contested cases shall be administered in accordance with these rules and the orders issued by the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.19(2) The parties have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

4.19(3) The following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days following filing of a petition, the counsel of record for all parties and all self-represented parties shall request a hearing by using WCES. In a case for which a request for waiver of the mandatory use of WCES has been granted, counsel of record for all parties and all self-represented parties shall jointly contact the hearing administrator by telephone at (515)725-3891 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by email at dwc.hearing@iwd.state.ia.us to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's website. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by email, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or email until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at any date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator within nine months of the filing of the original notice and petition, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

b. A party who intends to introduce evidence from an expert witness, including a rebuttal expert witness, shall certify to all other parties the expert's name, subject matter of expertise, qualifications, and a summary of the expert's opinions within the following time period: (1) claimant—120 days before hearing; (2) employer/second injury fund of Iowa—90 days before hearing; (3) rebuttal—60 days before hearing. Certification is not required to introduce evidence from an examining physician pursuant to Iowa Code section 85.39, a treating physician, or a vocational consultant if the expert witness is known by all parties to have personally provided services to the claimant and the witness's reports are served on opposing parties prior to the date when certification is required. The parties may alter these times by written agreement.

c. Discovery responses must be supplemented as required in Iowa Rules of Civil Procedure 1.503(4) and 1.508(3). Discovery responses shall be supplemented within 20 days after a party requests supplementation. All discovery responses, depositions, and reports from independent medical examinations shall be completed and served on opposing counsel and self-represented parties at least 30 days before hearing. The parties may alter these times by written agreement.

d. At least 30 days before hearing, counsel of record and self-represented parties shall serve a witness and an exhibit list on all opposing counsel and self-represented parties and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The witness and exhibit lists are not filed in WCES. If the exhibit list does not contain actual exhibits, the exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. At least 14 days before hearing, counsel of record and self-represented parties shall file all proposed exhibits in WCES, or if a party has been granted a waiver of the mandatory use of WCES, the party shall file the proposed exhibits with the division of workers' compensation. At least seven days before the hearing, counsel of record and self-represented parties shall file all written objections and motions to exclude evidence with the division of workers' compensation and serve a copy on all other parties. Objections to exhibits are waived if they are not filed at least seven days before the hearing. Evidentiary depositions pursuant to

Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, or as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to rule 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. If a party offers an exhibit or document in paper form which is accepted by the workers' compensation commissioner or a deputy workers' compensation commissioner, the party shall have five working days to submit an electronic copy of the document by using WCES.

f. At least 14 days before the hearing, counsel of record and self-represented parties shall prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy workers' compensation commissioner who presides at the hearing. The hearing report shall be filed in portable document format (pdf) or as an image-on-text document (searchable pdf) as a proposed hearing report. The hearing report shall be signed by all counsel of record and self-represented parties. The approved hearing report order shall be signed by the deputy workers' compensation commissioner and filed in WCES.

g. If a party is unable to meet a nonjurisdictional filing deadline because of a technical failure in WCES, the party must file the document using the earliest available electronic or nonelectronic means. The filing will be accepted by the division of workers' compensation as timely unless the workers' compensation commissioner or a deputy workers' compensation commissioner determines otherwise.

h. Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is each party's responsibility to ensure that a document is filed timely to comply with jurisdictional deadlines. A technical failure, including a failure of WCES, will not excuse a failure to comply with a jurisdictional deadline.

i. A party is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the party.

This rule is intended to implement Iowa Code chapter 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.20(86) Prehearing conference. A deputy workers' compensation commissioner or the workers' compensation commissioner may order parties in the case to either appear before the workers' compensation commissioner or a deputy workers' compensation commissioner for a conference, or communicate with the commissioner or a deputy commissioner and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

1. The necessity or desirability of amending pleadings by formal amendment or prehearing order;
2. Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;
3. Limiting the number of witnesses;
4. Settling any facts of which the workers' compensation commissioner or a deputy workers' compensation commissioner is to be asked to take official notice;
5. Stating and simplifying the factual and legal issues to be determined;
6. Specifying the items and amounts of compensation claimed;
7. Specifying all proposed exhibits and proof thereof;
8. Consolidation of cases and bifurcation of issues;
9. Specifying all witnesses expected to testify;
10. Possibility of settlement;
11. Filing of advance briefs, if any;
12. Setting or altering dates for completion of discovery or completion of medical evidence by each party;

13. Any other matter which may facilitate, expedite, or simplify any contested case.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.21(86) Prehearing conference record. At the request of any attorney in the case, or at the discretion of a deputy workers' compensation commissioner or the workers' compensation commissioner, the entire prehearing conference or any designated part thereof shall be recorded and the cost of the reporter shall be assessed to the requesting party or, if directed by the workers' compensation commissioner or deputy workers' compensation commissioner, assessed as costs.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.22(86) Orders. A deputy workers' compensation commissioner or the workers' compensation commissioner may enter an order reciting any action taken at a prehearing conference or pursuant to any other procedures prescribed which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the workers' compensation commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the workers' compensation commissioner or a deputy workers' compensation commissioner. Continuances are governed by Iowa Rules of Civil Procedure 1.910-1.912. Requests for continuance shall also state in detail the reasons for the request and whether the opposing party accedes to the request.

The parties shall promptly notify the workers' compensation commissioner of settlements.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy workers' compensation commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision in WCES. If a party has been granted a waiver of the mandatory use of WCES, the party shall file the application for rehearing with the division of workers' compensation and serve a copy on the other parties. An application for rehearing shall be deemed denied unless the deputy workers' compensation commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.25(17A,86) Appeal when rehearing requested. An appeal to or review on motion of the workers' compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers' compensation commissioner under rule 876—4.24(17A,86) has been denied or deemed denied or a decision on rehearing has been issued. If a notice of appeal is filed by one party and an application for rehearing is filed by a different party, the deputy workers' compensation commissioner retains jurisdiction to act on the application for rehearing, and the notice of appeal is stayed and deemed to have been filed on the day after the application for rehearing is denied or deemed denied or the decision on rehearing is issued.

This rule is intended to implement Iowa Code sections 17A.15, 17A.16 and 86.24.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.26 Rescinded, effective July 1, 1977.

876—4.27(17A,86) Appeal. Except as provided in rules 876—4.2(86) and 876—4.25(17A,86), an appeal to the workers' compensation commissioner from a decision, order or ruling of a deputy workers' compensation commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal in WCES. If a party has been granted a waiver of the mandatory use of WCES, the party shall file the notice of appeal with the division of workers' compensation and serve a copy on the other parties. If two or more contested cases were consolidated for hearing, the notice of appeal shall specify the case number of each case the party wishes to include in the appeal. The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors*, 373 N.W.2d 115 (Iowa 1985). The notice shall be served on the opposing parties as provided in rule 876—4.13(86). An appeal shall be heard in Polk County or in any location designated by the workers' compensation commissioner.

An interlocutory decision, order or ruling can be appealed only as hereinafter provided. A decision, order or ruling is interlocutory if, when issued, it does not dispose of all issues in the contested case that are ripe for adjudication. If the sole issue remaining for determination is claimant's entitlement to additional compensation for unreasonable denial or delay of payment pursuant to Iowa Code section 86.13, the decision is not interlocutory. An adjudication that awards ongoing payments of weekly compensation under Iowa Code section 85.33 or 85.34(1) is not interlocutory. The workers' compensation commissioner may, upon application from any party or on the workers' compensation commissioner's own motion, and upon such terms as the workers' compensation commissioner orders, grant an appeal from an interlocutory decision, order or ruling if the workers' compensation commissioner finds that the ruling affects substantial rights, that the ruling will materially affect the final decision and that determination of the correctness of the ruling will better serve the interests of justice.

A cross-appeal may be taken under this rule or rule 876—4.25(17A,86) in the same manner as an appeal within the 20 days for the taking of an appeal or within 10 days after filing of the appeal, whichever is later.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.28(17A,86) Briefing requirements on appeal. The workers' compensation commissioner shall decide an appeal upon the record submitted to the deputy workers' compensation commissioner unless the workers' compensation commissioner is satisfied that additional newly discovered material evidence exists, which could not have been discovered and produced at the hearing with reasonable diligence. A party must file a request for taking additional evidence in WCES within 20 days after the notice of appeal was filed. If a party has been granted a waiver of the mandatory use of WCES, the party shall file the request for taking additional evidence with the division of workers' compensation and serve a copy on the other parties. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) Time for serving briefs. Appellant shall serve its brief within 50 days after the date on which notice of appeal was filed, or within 20 days after filing of the hearing transcript, whichever date is later. Appellee shall serve its brief within 20 days after service of the brief of appellant. If appellant serves a reply brief, it shall be done within 10 days after service of appellee's brief.

4.28(2) Cross-appeals. In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. When more than one party appeals, the party filing the first notice of appeal will be designated the appellant and the party filing a subsequent notice of appeal will be designated the cross-appellant.

4.28(3) Multiple adverse parties. In cases involving multiple appeals involving multiple claimants, employers, insurance carriers or the second injury fund, the workers' compensation commissioner shall enter an order establishing a briefing schedule.

4.28(4) Form of briefs. Respective briefs and exceptions on appeal shall include the following:

- a. Statement of the case.
- b. Statement of the issues on appeal.
- c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.
- d. A short conclusion stating the precise relief sought.

The appellee may submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant.

4.28(5) *Length of briefs.* See rule 876—4.45(17A,86).

4.28(6) *Extensions.* One extension of up to 30 days will be granted if a motion to extend the time is served on or before the date service of the brief is required by this rule. A subsequent extension requires a motion showing good cause. The commissioner may grant a party the right to serve and file a brief after the time to do so has expired if the appeal or cross-appeal has not been dismissed or decided, the party moves for relief within 60 days from the date service of the brief was due, and the motion shows that the failure to timely serve the brief was due to a good cause that could not have been avoided through the exercise of reasonable diligence.

4.28(7) *Issues considered on appeal.* The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in rule 876—4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy workers' compensation commissioner. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

4.28(8) *Sanctions.* If an appellant's brief or cross-appellant's brief is not served and filed within the time required by this rule, including any extension, the party defending against the appeal or cross-appeal may move for dismissal. If an appellant's brief or cross-appellant's brief is not served within 30 days after the time required by these rules, including any extension, the workers' compensation commissioner will notify the party in default that upon 15 days from service of the notification the appeal or cross-appeal will be dismissed for want of prosecution unless the default is remedied within that period. If the default is not remedied, the appeal or cross-appeal will be dismissed. If an appellee's brief or cross-appellee's brief is not served and filed, the appeal will be decided without reference to that brief.

This rule is intended to implement Iowa Code section 86.24.

[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.29(86,17A) Review upon motion. Except as provided in rule 876—4.25(17A,86), the workers' compensation commissioner may review the decision, order or ruling of a deputy workers' compensation commissioner in any contested case upon the workers' compensation commissioner's own motion. Except as provided in rule 876—4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The workers' compensation commissioner shall specify in a notice filed in WCES or mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this rule shall be heard in Polk County or in any locality designated by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.30(86,17A) Transcript on appeal or review. When an appeal to or review on motion of the workers' compensation commissioner is taken pursuant to rule 876—4.27(17A,86) or 876—4.29(86,17A), a transcript of the proceedings before the workers' compensation commissioner shall be filed with the workers' compensation commissioner within 30 days after the notice of the appeal

is filed with the workers' compensation commissioner. The appealing party shall bear the initial cost of transcription on appeal and shall pay the certified shorthand reporter or service for the transcript. In the event there is a cross-appeal, the appellant and cross-appellant shall share the cost of the transcript. In the event the cost of the transcript has been initially borne by a nonappealing party prior to appeal, the nonappealing party is entitled to reimbursement within 30 days after serving on the appealing party proof of the cost of the transcript. If not so reimbursed, the appeal may be dismissed.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.19, 86.24 and 86.40.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.31(86) Completion of contested case record. No evidence shall be taken after the hearing.

This rule is intended to implement Iowa Code section 86.18.

876—4.32(86,17A) Recording of proceedings. The workers' compensation commissioner may arrange for the attendance of a certified shorthand reporter or mechanical means to record proceedings in contested cases. The workers' compensation commissioner may require the defendant employer or on appeal to the workers' compensation commissioner, the appellant, to arrange for the attendance of a certified shorthand reporter or adequate mechanical means of recording the proceedings. The charges for attendance shall be paid initially to the certified shorthand reporter or service by the employer or, on an appeal to the workers' compensation commissioner, the appellant. The charges shall be taxed as costs. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost.

This rule is intended to implement Iowa Code section 86.19.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.33(86) Costs. Costs taxed by the workers' compensation commissioner or a deputy workers' compensation commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before costs are taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy workers' compensation commissioner or workers' compensation commissioner hearing the case unless otherwise required by the Iowa Rules of Civil Procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.34(86) Dismissal for lack of prosecution. It is the declared policy that in the exercise of reasonable diligence, all contested cases before the workers' compensation commissioner, except under unusual circumstances, shall be brought to issue and heard at the earliest possible time. To accomplish such purpose the workers' compensation commissioner may take the following action:

4.34(1) Any contested case, where the original notice and petition is on file in excess of two years, may be subject to dismissal after the notice in 4.34(2) is sent to all parties and after the time as provided for in the notice.

4.34(2) After the circumstances provided in 4.34(1) occur, all parties to the action, or their attorneys, shall be sent notice from the division of workers' compensation by certified mail containing the following:

- a. The names of the parties;
- b. The date or dates of injury involved in the contested case or appeal proceeding;
- c. Counsel appearing;
- d. Date of filing of the petition or appeal;
- e. That the contested case proceeding will be dismissed without prejudice on the thirtieth day following the date of the notice unless good cause is shown why the contested case proceeding should not be dismissed.

4.34(3) The action or actions dismissed may at the discretion of the workers' compensation commissioner and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, be reinstated. Applications for such reinstatement, setting forth the grounds, shall be filed within three months from the date of dismissal.

This rule is intended to implement Iowa Code sections 86.8, 17A.3(1) "b" and 86.18.

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner" and reference to the word "trial" shall be deemed reference to "contested case hearing."

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8. [ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy workers' compensation commissioner or the workers' compensation commissioner, the deputy workers' compensation commissioner or workers' compensation commissioner may impose sanctions which may include dismissing the action without prejudice, excluding or limiting evidence, assessing costs or expenses, and closing the record in whole or in part to further activity by the party.

This rule is intended to implement Iowa Code section 86.8. [ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of Iowa Code chapter 17A shall file a written stipulation of such waiver with the workers' compensation commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

This rule is intended to implement Iowa Code section 17A.10.

876—4.38(17A) Recusal.

4.38(1) The workers' compensation commissioner or a deputy workers' compensation commissioner shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case;
- g. Has even the appearance of impropriety; or
- h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.38(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and rule 876—4.38(17A).

4.38(3) In a situation where the workers’ compensation commissioner or deputy workers’ compensation commissioner knows of information which might reasonably be deemed to be a basis for recusal and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.38(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for recusal but must establish the grounds by the introduction of evidence into the record.

If the workers’ compensation commissioner or deputy workers’ compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

This rule is intended to implement Iowa Code section 17A.17.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.39(17A,86) Filing by facsimile transmission (fax). If a party has been granted a waiver of the mandatory use of WCES, all documents filed with the division of workers’ compensation pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the division of workers’ compensation. The division of workers’ compensation will not provide a mailed file-stamped copy of documents filed by fax. The fax number for the division of workers’ compensation is (515)281-6501.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.40(73GA,ch1261) Dispute resolution. The workers’ compensation commissioner or the workers’ compensation commissioner’s designee (hereinafter collectively referred to as the workers’ compensation commissioner) shall have all power reasonable and necessary to resolve contested cases filed under Chapter 4 of these rules. This power includes, but is not limited to, the following: the power

to resolve matters pursuant to initiation of mandatory dispute resolution proceedings by the workers' compensation commissioner; the power to resolve matters pursuant to a request by the parties; the power to impose sanctions; and the power to require conduct by the parties. However, no issue in a contested case may be finally resolved under this rule without consent of the parties.

An employee of the division of workers' compensation who has been involved in dispute resolution shall not be a witness in any contested case proceeding under this chapter.

4.40(1) Mandatory proceedings. The workers' compensation commissioner may require that the parties participate in dispute resolution in the following situation:

- a. The oldest one-fourth of contested cases which are not scheduled for hearing.
- b. All cases where discovery deadlines have been set pursuant to a prehearing order and the deadlines have passed.
- c. All cases where the principal dispute is medical benefits.
- d. All cases where the only dispute is the extent of disability.
- e. All cases involving liability disputes of alleged workers' compensation insurance carriers and alleged employers pursuant to Iowa Code section 85.21.
- f. Equitable apportionment of compensation payments pursuant to Iowa Code section 85.43.
- g. All cases where the workers' compensation commissioner determines that dispute resolution would be in the best interest of the parties.

4.40(2) Voluntary proceedings. The parties may voluntarily agree to submit to dispute resolution.

4.40(3) The parties must comply with the good faith requirements of rule 876—10.1(17A,85,86) before requesting a voluntary proceeding pursuant to subrule 4.40(2).

4.40(4) See 876—subrule 10.1(5) regarding informal dispute resolution.

4.40(5) Rescinded IAB 9/14/94, effective 10/19/94.

This rule is intended to implement Iowa Code sections 17A.10, 86.8 and 86.13 and 1990 Iowa Acts, chapter 1261, section 3.

876—4.41(17A,86) Evidence. Reserved.

876—4.42(17A,86) Binding arbitration. Reserved.

876—4.43(17A,85,86) Summary trial. Reserved.

876—4.44(17A,85,85A,85B,86,87) Expedited proceeding—criteria. Reserved.

876—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy workers' compensation commissioner or by permission of the workers' compensation commissioner when an appeal pursuant to rule 876—4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type, and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does not prohibit a presiding deputy workers' compensation commissioner or the workers' compensation commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.46(17A,85,86) Contested case proceedings—health service disputes.

4.46(1) See rule 876—10.3(17A,85,86) for informal resolution procedures and definitions. The following definition also applies to this rule:

"Petitioning party" means the person who requests or initiates a contested case proceeding.

4.46(2) If utilization of the procedures given in rule 876—10.3(17A,85,86) does not resolve the dispute and the parties have complied with the good faith requirements of rule 876—10.1(17A,85,86), a contested case may be initiated. The procedures given in rule 876—10.3(17A,85,86) must be used prior to initiation of a contested case. The provider or the responsible party that is unwilling to accept the determination of the person making a determination after reviewing the dispute as provided in rule 876—10.3(17A,85,86) shall initiate the contested case proceeding. The proceeding shall be initiated as provided in this chapter and Iowa Code chapter 17A and shall follow the provisions of this rule. The proceeding must be initiated within 30 days of the date of the determination made pursuant to rule 876—10.3(17A,85,86). If a contested case proceeding is not initiated or is not initiated within the time provided in this rule, the allowed amount of the charge by the provider shall be the amount determined pursuant to rule 876—10.3(17A,85,86).

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 876—10.3(17A,85,86) and a copy of the determination made pursuant to rule 876—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the workers' compensation commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the workers' compensation commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced pursuant to rule 876—10.3(17A,85,86). The issues of the contested case proceeding shall be limited to the dispute considered in rule 876—10.3(17A,85,86).

4.46(4) The petitioning party has the burden of proof.

4.46(5) If the petitioning party wishes to file a brief, it must be filed with the request for contested case proceeding.

4.46(6) The opposing party must file a response within 30 days of the date of service of the request for contested case proceeding.

4.46(7) If the opposing party wishes to file a brief, it must be filed with the response.

4.46(8) Sixty days after the request for contested case is filed with the workers' compensation commissioner, the workers' compensation commissioner will review the matter. The notice of the review to the parties shall be the provisions of this rule and no other notice will be given.

4.46(9) The workers' compensation commissioner shall review the matter and make a decision as soon as practicable after the review. The decision shall be as provided in this chapter and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.47(17A,85,86) Second injury fund benefits contested cases. Reserved.

876—4.48(17A,85,86) Application for alternate care.

4.48(1) Purpose. The purpose of this rule is to establish the procedures for issuing decisions on applications for alternate care within the time provided in Iowa Code section 85.27.

4.48(2) Definitions. The following definitions apply to this rule:

“Application for alternate care,” hereinafter referred to as *“application,”* shall mean a contested case proceeding filed with the workers' compensation commissioner which requests alternate care pursuant to Iowa Code section 85.27.

“Employer” means the person or entity who is liable for payment of medical services provided pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer with workers' compensation insurance.

“Proper application” means an application for alternate care that complies with the requirements of this rule.

4.48(3) Dissatisfaction—basis. Prior to filing the application the employee must communicate the basis of dissatisfaction of the care to the employer.

4.48(4) Application. The application shall: be filed on the form provided by the workers' compensation commissioner; concern only the issue of alternate care; state the reasons for the employee's dissatisfaction with the care chosen by the employer; be served on the employer; contain proof of service on the employer; and specify whether a telephone or in-person hearing is requested.

4.48(5) Fee. No filing fee is due. See 4.8(2) "a."

4.48(6) Employer liability. Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 876—4.1(85,85A,85B,86,87,17A).)

4.48(7) Notice of hearing. The workers' compensation commissioner will notify the parties by ordinary mail, by facsimile transmission (fax) or by WCES of the time, place and nature of the hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone, in person or by other digital means.

4.48(8) Appearance or answer. After being served with an application for alternate care, the employer shall file an appearance or answer as soon as practicable before the time of the hearing.

4.48(9) Discovery and evidence. All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) Motions. All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on discovery matters or motions.

4.48(11) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) Hearing. The hearing will be held by telephone, in person or by other digital means in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

Copies of the recording will be provided to the parties upon notice of appeal. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code section 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy workers' compensation commissioner may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) Decision. A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.49(17A,85,86) Method of holding hearing. Any hearing held under this chapter may be by voice or video technology including but not limited to Internet-based video.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8, 86.17 and 86.18.

876—4.50(85) Vocational training, education, and supplies.

4.50(1) Purpose. The purpose of this rule is to establish the procedures for issuing decisions on applications for vocational training, education, and supplies provided for in Iowa Code section 85.70(2).

4.50(2) Definitions. The following definitions apply to this rule:

“Application for vocational training and education hearing” or “application” means a contested case proceeding filed with the division of workers’ compensation contesting the results of an evaluation and determination or contesting or requesting the termination of a vocational training and education program.

“Evaluation and determination” means an assessment conducted by the department of workforce development to determine if the employee would benefit from a vocational training and education program offered through an area community college to allow the employee to return to the workforce.

“Request for vocational training and education” or “request” means a written request for an evaluation and determination of whether an employee is entitled to vocational training, education, and supplies.

“Vocational training and education” shall include general educational development programs for employees who have not graduated from high school or obtained a general education diploma, and career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, offered through an area community college that will allow the employee to return to the workforce.

4.50(3) Application for vocational training and education.

a. An application shall:

- (1) Only concern the issue of vocational training, education, and supplies;
- (2) Be filed on the form provided by the division of workers’ compensation;
- (3) State the reasons for the application;
- (4) Be served on the other party;
- (5) Contain a proof of service on the other party; and
- (6) Specify whether a telephone or in-person hearing is requested.

b. An application for vocational training and education must be filed in WCES unless a party has been granted a waiver of the mandatory use of WCES, in which case the party shall file the application for vocational training and education with the division of workers’ compensation. Applicant(s) must serve a copy of this form on the appellee(s) by certified mail, return receipt requested, or by personal service as in civil actions in accordance with rule 876—4.7(86,17A) and mail a copy to the attorney of record for the appellee(s), if known, in accordance with rule 876—4.13(86).

4.50(4) Fee. No filing fee is due. See paragraph 4.8(2) “a.”

4.50(5) Request for vocational education and training. Prior to filing an application, the employee shall complete a request on a form supplied by the department of workforce development and submit the completed form to the department of workforce development asking for an evaluation and determination. The employee, employer, or insurance carrier may contest the results of the evaluation and determination by filing an application with the division of workers’ compensation.

4.50(6) Proper application. An application may not be filed under this rule until:

a. An evaluation and determination has been made by the department of workforce development; and

b. There has been a finding by the division of workers' compensation or the employer or the employer's insurance carrier or both and the employee agree that the employee has sustained an injury to the shoulder resulting in a permanent partial disability for which compensation is payable under Iowa Code section 85.34(2)"n," and the employee cannot return to gainful employment because of such disability.

4.50(7) Notice of hearing. The workers' compensation commissioner shall notify the parties by electronic mail, ordinary mail, or facsimile of the time, place, and nature of the hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice shall specify whether the hearing will be held by telephone or in person.

4.50(8) Evidence. Any written evidence to be used by the employer, the employer's insurance carrier, or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of hearing. Written evidence shall be limited to 50 pages per party.

4.50(9) Motion to change hearing type. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on motions.

4.50(10) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to five pages.

4.50(11) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. If the party filing the application does not request an in-person hearing in the application, the other parties may request an in-person hearing. The hearing will be recorded electronically. Copies of the recording will be provided to the parties. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy of the transcript shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner, unless the parties submit an agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid by the party that disputes the accuracy of the transcript, pursuant to Iowa Code section 86.19(1).

4.50(12) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and the employer's insurance carrier shall be treated as one party unless their interests appear to be in conflict, and a representative of either the employer or the employer's insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.50(13) Decision. A decision will be issued within 30 working days of receipt of a proper application.

This rule is intended to implement Iowa Code sections 17A.12, 85.70(2), and 86.17.

[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.51(86) Agency notice of judicial review matters. A party who petitions for judicial review shall file a copy of the petition for judicial review in WCES within ten days of filing the petition with a district court. If a party has been granted a waiver of the mandatory use of WCES, the party shall file a copy of the petition for judicial review with the division of workers' compensation within ten days of filing the petition with a district court. A party shall also file a copy of each appellate court decision in WCES within ten days of the date the appellate court decision was issued and filed. If a party has been granted a waiver of the mandatory use of WCES, the party shall file a copy of the appellate court decision with the division of workers' compensation within ten days of the date the appellate court decision was

issued and filed. Within 45 days of the filing of the final appellate court decision, the same party shall notify the division of workers' compensation of the result of the appellate process.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—4.52(86) Rules of electronic procedure. Chapter 16 of the Iowa Court Rules of Electronic Procedure shall govern the use and filings in WCES for contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules or Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner or deputy workers' compensation commissioner," reference to the word "trial" shall be deemed reference to "contested case hearing," and reference to "clerk of court" shall be deemed reference to staff at the division of workers' compensation.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.
[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

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CHAPTER 6
SETTLEMENTS AND COMMUTATIONS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 6]

876—6.1(85,86) Settlements under Iowa Code section 85.35. All proposed settlements shall be submitted to the workers' compensation commissioner for approval. An agreement for settlement pursuant to Iowa Code section 85.35(2) shall be on Form 14-0021. A compromise settlement pursuant to Iowa Code section 85.35(3) shall be on Form 14-0025. A combination settlement pursuant to Iowa Code section 85.35(4) shall be on Form 14-0159. A contingent settlement pursuant to Iowa Code section 85.35(5) shall be on Form 14-0161.

6.1(1) Evidence that a settlement should be approved as required by Iowa Code section 85.35(7) shall accompany the settlement or be incorporated into the settlement forms. It is presumed that the showing required by Iowa Code section 85.35(7) has been made if the claimant is represented by an attorney licensed to practice law in this state.

6.1(2) The documents for a compromise settlement shall identify either the specific date or dates of injury or the specific injurious condition or conditions, or both. The documents for a compromise settlement, including any addendum to the documents, shall not contain any language that either expressly states or implies that the proposed compromise settlement is a final settlement of any and all injuries, known or unknown, that an employee may have sustained while employed by the employer. If a compromise settlement is submitted that does not comply with this subrule, the workers' compensation commissioner shall return the proposed compromise settlement to the party that submitted it.

6.1(3) Approval of a compromise settlement pursuant to Iowa Code section 85.35(3) is a final bar to rights under the Iowa workers' compensation law, and the approved compromise settlement is not subject to review under Iowa Code section 85.26(2).

6.1(4) Nothing in this rule shall prohibit the approval of settlements in other appropriate cases when allowed by Iowa Code section 85.35(7).

This rule is intended to implement Iowa Code section 85.35.
[ARC 3528C, IAB 12/20/17, effective 1/24/18]

876—6.2(85,86) Commutation. The following requirements must be met before a commutation will be considered or granted:

6.2(1) A first report of injury, an acknowledgment of compensability and an updated supplemental claim activity report must be filed.

6.2(2) The commutation forms provided for in 876—6.4(85,86) must be filed.

6.2(3) All doctors' and practitioners' reports relevant to the disability of the claimant involved in the commutation must be attached to the commutation forms.

6.2(4) Claimant's condition as a result of the injury as shown by the medical reports cannot be one which will be expected to deteriorate. When a partial commutation is sought, this subrule shall diminish in importance.

6.2(5) Claimant's condition as a result of the injury shown by the doctors' and practitioners' reports cannot be one which will be expected to require future treatment unless the future treatment is adequately provided for. When a partial commutation is sought, this subrule shall diminish in importance.

6.2(6) A detailed statement of claimant's need or other reason for a lump sum of money must be attached to the application. The analysis shall include disclosure of any attorney fee and case expense amount to be paid from the full commutation. If all parties are represented by an attorney, the parties may waive the statement of need, unless the case involves a dependent who is a minor.

6.2(7) When multiple dependents are involved, a signed stipulation or order of apportionment identifying the proportion of benefits to be received by each dependent shall be attached to the commutation form.

6.2(8) A signed stipulation as to the degree of permanent disability shall be attached to the commutation form.

6.2(9) If all parties are represented by an attorney, a commutation of benefits is presumed to be in the best interests of the claimant.

6.2(10) If all parties are represented by an attorney, the parties may stipulate to the definitely determined period of compensation.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.
[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—6.3(85,86) Commutation tables. The following tables are to be used in determining the sum to be paid in appropriate commutation proceedings. Nothing in this rule is to prevent waiver of the discount in subrule 6.3(2) by the employer or insurance carrier.

6.3(1) Life expectancy table. The life expectancy is determined by taking the age of the person, set forth in the “age” column and comparing it to the “weeks” column, which indicates the weeks an individual at the age indicated will be expected to continue to live.

LIFE EXPECTANCY TABLE

AGE	WEEKS	AGE	WEEKS	AGE	WEEKS
0-1	4020	34-35	2335	68-69	832
1-2	3994	35-36	2288	69-70	801
2-3	3942	36-37	2236	70-71	764
3-4	3895	37-38	2189	71-72	728
4-5	3843	38-39	2142	72-73	697
5-6	3791	39-40	2090	73-74	666
6-7	3739	40-41	2044	74-75	629
7-8	3687	41-42	1997	75-76	598
8-9	3635	42-43	1950	76-77	572
9-10	3583	43-44	1903	77-78	541
10-11	3531	44-45	1856	78-79	510
11-12	3484	45-46	1810	79-80	484
12-13	3432	46-47	1763	80-81	458
13-14	3380	47-48	1716	81-82	432
14-15	3328	48-49	1669	82-83	406
15-16	3276	49-50	1622	83-84	385
16-17	3224	50-51	1576	84-85	359
17-18	3177	51-52	1534	85-86	338
18-19	3125	52-53	1487	86-87	317
19-20	3078	53-54	1446	87-88	302
20-21	3026	54-55	1399	88-89	281
21-22	2980	55-56	1357	89-90	265
22-23	2928	56-57	1310	90-91	250
23-24	2881	57-58	1269	91-92	234
24-25	2829	58-59	1227	92-93	224
25-26	2782	59-60	1186	93-94	208
26-27	2730	60-61	1144	94-95	198
27-28	2683	61-62	1102	95-96	187

AGE	WEEKS	AGE	WEEKS	AGE	WEEKS
28-29	2631	62-63	1061	96-97	177
29-30	2584	63-64	1024	97-98	166
30-31	2532	64-65	983	98-99	156
31-32	2486	65-66	946	99-100	151
32-33	2434	66-67	910	100+	140
33-34	2387	67-68	868		

6.3(2) Discount. When an original notice and petition for commutation of remaining future weekly benefits, either full or partial, is filed, the remaining future weekly benefits may be commuted to present dollar value. If the remaining future weekly benefits are converted to a present dollar value, the present dollar value shall be determined as provided in this subrule. A discount will be used to convert the value of remaining future weekly benefits to present dollar value. The discount will be based on a compound interest rate calculated pursuant to Iowa Code section 668.13(3) and in effect on the date informal agreement between the parties is reached for commutation and the number of weeks of remaining future benefits. The interest rate used to determine the discount shall be specified on the original notice and petition for commutation filed for approval by the workers' compensation commissioner.

6.3(3) Life expectancy and remarriage probability table. This table expresses in weeks the combined probability of life expectancy and remarriage. The column on the left indicates the age of the surviving spouse at the time of the work-related death. Columns A through E indicate, respectively, the first through fifth years following the date of death that the surviving spouse remains unmarried. For example, if the date of death was July 1, 2005, and the surviving spouse was age 20 at the time of the decedent's death, a commutation sought on the second anniversary of the death, July 2, 2007, would result in an expected duration of 550.02 weeks, the amount found in Column B which indicates the second year of unmarried status following age 20. Following the second anniversary of the date of death and including the third anniversary, Table C would be applicable. Begin in the left-hand column in the line indicating the age at *date of death*—not the age at which a commutation is sought. Then move to the column which is indicative of the number of years the surviving spouse has remained unmarried.

A surviving spouse, 20 years old on the date of the decedent's death who seeks a commutation after the fifth anniversary of the date of death, would use Table F. The fact that the surviving spouse has remained unmarried for over five years negates use of Columns A through E. A commutation sought during the fifth year of remaining unmarried would result in an expected duration of 1031.64 weeks. For example, if the surviving spouse, who was 20 years old on the date of the decedent's death, is 30 years old at the time a commutation is sought and seeks a commutation *after* the tenth anniversary of the date of death, start in Column F in line 20 at the age column. For each year beyond the sixth anniversary of the death, move *down* Column F one line for each year. [Note the left-hand age column plays no part at this point.] In this example, the 30-year-old surviving spouse who seeks a commutation after the tenth anniversary of the date of death would have an expected duration of 1247.07 weeks.

EXPECTED DURATION OF LIFE AND REMARRIAGE IN WEEKS

AGE	A	B	C	D	E	F
19	452.18	505.55	640.75	788.27	905.44	993.12
20	495.82	550.02	683.69	828.42	943.01	1031.64
21	541.23	596.18	729.80	868.87	982.17	1071.64
22	589.23	646.05	776.66	911.67	1023.48	1115.36
23	640.88	696.92	825.34	956.43	1068.72	1157.99
24	693.76	749.90	875.77	1005.20	1113.34	1200.77
25	748.61	804.49	929.45	1053.51	1158.36	1247.07
26	804.72	861.90	982.20	1102.07	1206.94	1290.45

AGE	A	B	C	D	E	F
27	863.24	917.91	1034.48	1153.43	1252.42	1332.79
28	919.92	972.96	1089.02	1201.54	1296.56	1376.65
29	975.76	1029.70	1140.04	1248.06	1342.09	1415.27
30	1034.13	1083.96	1190.18	1296.47	1382.06	1450.83
31	1087.87	1135.18	1239.43	1337.76	1419.17	1482.26
32	1140.84	1187.76	1283.95	1376.65	1452.19	1514.63
33	1195.00	1235.69	1325.54	1411.36	1486.03	1539.38
34	1244.19	1281.06	1363.39	1447.25	1512.62	1560.28
35	1290.62	1322.51	1402.06	1475.89	1535.47	1577.36
36	1333.45	1365.12	1433.98	1501.08	1554.46	1590.73
37	1377.93	1401.32	1462.76	1522.96	1570.28	1595.37
38	1414.42	1432.95	1486.92	1540.28	1575.74	1600.95
39	1447.51	1460.93	1507.65	1548.65	1583.08	1603.12
40	1476.55	1484.88	1519.19	1558.50	1586.74	1601.68
41	1501.23	1499.62	1531.97	1564.58	1586.80	1590.32
42	1517.04	1515.76	1541.35	1567.27	1577.19	1581.72
43	1533.81	1528.55	1547.54	1560.49	1570.28	1564.36
44	1546.84	1537.33	1543.96	1556.10	1554.65	1543.01
45	1556.54	1537.28	1543.60	1543.67	1534.98	1519.60
46	1555.21	1538.43	1533.33	1526.06	1512.93	1499.07
47	1556.30	1530.44	1518.64	1506.46	1493.84	1463.67
48	1547.08	1517.04	1500.92	1489.22	1459.61	1432.74
49	1532.42	1499.98	1484.71	1456.21	1429.75	1399.10
50	1514.59	1485.36	1453.56	1427.91	1396.88	1364.95
51	1496.96	1453.45	1424.86	1395.28	1363.33	1322.96
52	1464.50	1426.08	1393.79	1362.79	1321.79	1286.44
53	1433.32	1393.23	1359.71	1320.40	1285.68	1242.63
54	1401.59	1361.60	1319.99	1285.81	1242.14	1199.73
55	1367.01	1320.16	1283.74	1241.95	1199.37	1155.90
56	1324.97	1284.38	1240.69	1199.62	1155.55	1111.53
57	1286.93	1239.69	1196.89	1154.69	1110.98	1070.85
58	1243.31	1197.46	1153.84	1111.07	1070.21	1025.48
59	1200.31	1153.99	1109.49	1069.88	1024.57	986.90
60	1156.15	1109.74	1069.03	1024.18	985.85	944.55
61	1111.72	1069.39	1023.90	985.32	943.26	902.07
62	1052.14	1009.56	976.00	938.77	899.17	866.59
63	1010.13	974.17	936.60	898.84	866.01	822.92
64	975.20	935.34	897.28	866.19	822.35	786.37
65	935.81	895.62	864.23	822.48	785.91	752.62
66	896.90	863.56	821.55	786.69	752.25	713.35
67	864.14	820.43	785.30	752.93	712.94	681.47
68	821.01	784.34	751.79	713.70	681.08	645.13
69	784.83	750.98	712.72	681.88	644.76	610.80
70	751.92	712.57	681.58	646.12	610.45	578.30
71	712.75	680.79	645.24	611.61	577.91	547.80

AGE	A	B	C	D	E	F
72	681.26	644.91	611.27	579.40	547.43	513.50
73	645.03	610.64	578.74	548.89	513.25	486.97
74	610.85	578.30	548.43	514.74	486.74	455.68
75	578.57	548.13	514.38	488.35	455.51	428.23
76	548.68	514.51	488.51	457.72	428.11	397.70
77	514.31	487.93	457.11	430.12	397.62	374.66
78	487.92	456.77	429.75	411.41	374.60	348.88
79	457.82	430.58	400.47	377.94	348.85	324.95
80	428.23	397.79	375.01	349.47	324.92	298.01
81	400.21	377.46	352.11	328.63	298.01	286.57
82	376.27	350.69	327.08	300.46	286.57	271.47
83	350.54	326.80	300.18	289.12	271.47	259.15
84	326.67	299.90	288.84	274.06	259.15	249.81
85	299.74	288.56	273.74	261.78	249.81	249.60

This rule is intended to implement Iowa Code sections 85.45 and 85.47.
 [ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—6.4(85,86) Forms for commutation. Form No. 9 (14-0013) shall be used for a full commutation. Form No. 9A (14-0017) shall be used for a partial commutation. See rule 876—3.1(17A) for description of these forms.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

876—6.5(85) Statement of awareness. When a petition for settlement under Iowa Code section 85.35(3) or commutation is submitted, it shall contain or be accompanied by a verified statement from the injured employee indicating awareness that, upon approval by the workers' compensation commissioner of the settlement or commutation, a final bar to future claims or benefits under the Iowa workers' compensation law for such injury shall exist except as specifically reserved in any agreement.

This rule is intended to implement Iowa Code sections 85.35, 85.45, and 85.47.
 [ARC 3528C, IAB 12/20/17, effective 1/24/18]

876—6.6(86) Twenty-page limitation. Unless otherwise ordered by the workers' compensation commissioner or deputy workers' compensation commissioner, an application for approval of a settlement or an original notice and petition for approval of a commutation or partial commutation shall not be accepted for filing if accompanied by documentation in excess of 20 pages. An order approving a settlement or an original notice and petition for commutation or partial commutation accompanied by documentary evidence in excess of 20 pages is nevertheless valid, and is neither void nor voidable.

This rule is intended to implement Iowa Code sections 85.35, 85.47, 86.13 and 86.27.

876—6.7(85,86) Claimant statement. When the claimant is not represented by counsel, a claimant's statement on Form 14-0163, which the claimant has personally completed, certified and signed, must be submitted with all settlement and commutation forms and documents.

This rule is intended to implement Iowa Code sections 85.35 and 86.8.
 [ARC 3528C, IAB 12/20/17, effective 1/24/18]

876—6.8(85,86) Failure to timely file settlement. If a party notifies the workers' compensation commissioner that a matter scheduled for a hearing has been settled and the matter is removed from the hearing schedule, the proposed settlement shall be filed with the workers' compensation commissioner within 60 days of the notification. A party may, within 60 days of the notification, request an extension of time to file the settlement documents. If the settlement documents are not timely filed, the matter will be reassigned for hearing in Des Moines at a date determined by the workers' compensation

commissioner and the parties cannot request that the matter be rescheduled. Any matter rescheduled because settlement documents were not timely filed shall not again be removed from the hearing schedule because a party notifies the workers' compensation commissioner of a settlement.

This rule is intended to implement Iowa Code sections 85.35, 85.47, 85.48, 86.8, 86.13 and 86.27.
[ARC 3528C, IAB 12/20/17, effective 1/24/18]

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CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expenses in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy workers' compensation commissioner may order transportation expenses to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expenses.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Reserved.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day	=	.143	×	weekly rate
2 days	=	.286	×	weekly rate
3 days	=	.429	×	weekly rate
4 days	=	.571	×	weekly rate
5 days	=	.714	×	weekly rate
6 days	=	.857	×	weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All paper filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2022, through June 30, 2023, are the tables in effect on July 1, 2022, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Federal Income Tax Withholding Methods, Publication 15-T [2021].)
2. Iowa individual income tax withholding formula. (Iowa Department of Revenue [Effective January 1, 2022].)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [2021].)

This rule is intended to implement Iowa Code section 85.61(6).
[ARC 7947B, IAB 7/15/09, effective 7/1/09; ARC 8943B, IAB 7/28/10, effective 7/1/10; ARC 9586B, IAB 6/29/11, effective 7/1/11; ARC 0222C, IAB 7/25/12, effective 7/1/12; ARC 0835C, IAB 7/10/13, effective 6/30/13; ARC 1517C, IAB 7/9/14, effective 7/1/14; ARC 2611C, IAB 7/6/16, effective 7/1/16; ARC 3044C, IAB 4/26/17, effective 5/31/17; ARC 3884C, IAB 7/4/18, effective 8/8/18; ARC 4415C, IAB 4/24/19, effective 5/29/19; ARC 5042C, IAB 5/20/20, effective 6/24/20; ARC 5630C, IAB 5/19/21, effective 6/23/21; ARC 6318C, IAB 5/18/22, effective 6/22/22]

876—8.9(85) Rate determination. When determining the rate of weekly compensation benefits for a contested case proceeding, the parties to the case shall use the ratebook in effect on the date of the claimant's injury published by the division of workers' compensation at www.iowaworkcomp.gov/ratebook.

This rule is intended to implement Iowa Code chapter 85.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—8.10(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1 to 20 pages; \$20 plus \$1 per page for 21 to 30 pages; \$30 plus \$.50 per page for 31 to 100 pages; \$65 plus \$.25 per

page for 101 to 200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

EXAMPLE 1. For 7 pages of records the amount to be paid for furnishing duplicates shall not exceed \$20.

EXAMPLE 2. For 28 pages of records the amount to be paid for furnishing duplicates shall not exceed \$28 (\$20 plus (8 times \$1)).

EXAMPLE 3. For 41 pages of records the amount to be paid for furnishing duplicates shall not exceed \$35.50 (\$30 plus (11 times \$.50)).

EXAMPLE 4. For 127 pages of records the amount to be paid for furnishing duplicates shall not exceed \$71.75 (\$65 plus (27 times \$.25)).

EXAMPLE 5. For 210 pages of records the amount to be paid for furnishing duplicates shall not exceed \$91 (\$90 plus (10 times \$.10)).

This rule is intended to implement Iowa Code sections 85.27, 85.31, 85.33 to 85.37, 85.39, 85.61, 86.8, 86.10, 86.18 and 86.39.

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—8.11(85B) Apportionment of age-related loss for occupational hearing loss claims.

8.11(1) Effective date. This rule is effective for claims for occupational hearing loss filed on or after July 1, 1998.

8.11(2) Purpose. The purposes of this rule are to adopt tables and the method for calculating age-related hearing loss and to adopt a worksheet for apportionment of age-related hearing loss for occupational hearing loss claims.

8.11(3) Table. In 1972 the National Institute for Occupational Safety and Health (NIOSH) published the Criteria for a Recommended Standard: Occupational Exposure to Noise (NIOSH Publication No.73-11001). Table B-1, page I-16, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Males and Table B-2, page I-17, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Females. These NIOSH tables are used to calculate the correction value for age for males and females for 500, 1000, 2000 and 3000 hertz.

For example, the age correction for a male 21 years of age is 10 decibels at 500 hertz, 5 decibels at 1000 hertz, 3 decibels at 2000 hertz and 4 decibels at 3000 hertz. The correction for age is 5.50 decibels (the sum of 10+5+3+4 divided by 4).

The following table is to be used to determine an employee's age-related change in hearing level during the period of employment. To determine the age-related change in hearing level in decibels during the period of employment, subtract the value shown in the table for the employee's age at the beginning of employment from the value shown in the table for the employee's age on the date of injury.

NOTE: This table should not be used to compute standard threshold shift as required by rules of the Occupational Safety and Health Administration or Iowa occupational safety and health administration.

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
20 or younger	5.50	7.25
21	5.50	7.75
22	5.50	7.75
23	5.50	8.00
24	5.75	8.00
25	6.00	8.25
26	6.25	8.50
27	6.50	8.75
28	6.75	8.75
29	6.75	8.75

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
30	6.75	9.00
31	7.25	9.25
32	7.50	9.50
33	7.50	9.75
34	7.75	9.75
35	8.00	10.00
36	8.25	10.25
37	8.75	10.25
38	8.75	10.50
39	9.00	11.00
40	9.00	11.00
41	9.25	11.25
42	10.00	11.50
43	10.25	11.75
44	10.25	12.00
45	10.50	12.25
46	10.75	12.50
47	11.00	12.50
48	11.50	13.00
49	12.00	13.25
50	12.25	13.50
51	12.25	13.75
52	12.75	13.75
53	13.25	14.25
54	13.50	14.50
55	14.00	15.00
56	14.25	15.00
57	14.50	15.25
58	15.25	15.75
59	15.50	16.00
60 or older	16.00	16.25

8.11(4) Apportionment. The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.

5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.11(5) Worksheet. The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE		
Left Ear <u>Hearing Level</u>	Frequency <u>in Hertz</u>	Right Ear <u>Hearing Level</u>
1. _____	500	_____
2. _____	1000	_____
3. _____	2000	_____
4. _____	3000	_____
5. _____	total of lines 1 through 4	_____
divide by 4	(divide the "total" by 4)	divide by 4
6. _____	equals average equals	_____
minus 25	subtract "low fence"	minus 25
7. _____	equals "Excess"	_____
multiply by 1.5	multiply % factor	multiply by 1.5
8. _____	equals % loss each ear	_____
(% loss left ear)		(% loss right ear)
9. Age on date of injury	_____	
10. Age at beginning of employment	_____	
11. _____	correction for age on date of injury in dB from table minus	
12. _____	correction for age at beginning of employment in dB from table equals	
13. _____	age-related change in hearing level during employment in dB	
<u>LEFT EAR</u>		<u>RIGHT EAR</u>
Divide age-related change in hearing level from line 13 by average hearing level from line 6		
To obtain		
14. _____	age correction factor	_____
multiply % loss from line 8 by age-correction factor from line 14		
To obtain		
15. _____	deduction for age-correction	_____
subtract line 15 from line 8		
To obtain		
16. _____	age-corrected percent hearing loss	_____
<u>BINAURAL PERCENTAGE LOSS</u>		
17. _____	% loss better ear (smaller amount) from line 16, multiplied by 5 plus	

18. _____ % loss worse ear (larger amount)
from line 16
19. _____ equals
divided
by 6
equals
20. _____ % age-corrected binaural hearing loss

This rule is intended to implement Iowa Code sections 85B.9A and 86.8.
[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—8.12(85) Offer of suitable work. The employer shall communicate an offer of temporary work to the employee in writing, including the details of lodging, meals, and transportation. With each offer of temporary work, the employer shall notify the employee in writing that:

1. If the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;
2. During the period of refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits unless the work refused is not suitable; and
3. Failure to communicate the reason for the refusal to the employer in writing precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

This rule is intended to implement Iowa Code section 85.33.
[ARC 3528C, IAB 12/20/17, effective 1/24/18; ARC 6841C, IAB 2/8/23, effective 3/15/23]

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[◇] Two or more ARCs

¹ Effective date of 343—8.9(85,86), second unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995; delay lifted by this Committee May 9, 1995.

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 9]

The workers' compensation division of the workforce development department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices which are published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly's website.
[ARC 5042C, IAB 5/20/20, effective 6/24/20]

876—9.1(17A,22,85-87) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of workers' compensation of the department of workforce development".

"Open record" means a record other than a confidential record, including but not limited to the record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions of the agency.

"Person" means an individual, corporation, government or governmental subdivision or agency, business, trust, estate, partnership or association, or any other legal entity.

"Personally identifiable information." In lieu of the word "individual", insert the word "person".

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of a person, number, symbol, or other unique retriever assigned to a person and all records that are not retrievable by a personal identifier.

"Subject" means that person identified in a record.

876—9.3(17A,22,85-87) Requests for access to records.

9.3(1) Location of record. In lieu of the words "(insert agency head)", insert "commissioner". Also, in lieu of the words "(insert agency name and address)", insert "Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309".

9.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

9.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of the requested records if the time required for each of these services exceeds one-quarter hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The custodian shall prominently post in the agency offices the hourly fees to be charged.

[ARC 5042C, IAB 5/20/20, effective 6/24/20]

876—9.6(17A,22,85-87) Procedure by which additions, dissents, or objections may be entered into certain records. Insert immediately following ". . . official record of any agency proceeding." the following sentence: "Any additions, dissents, or objections entered into the record shall not be considered evidence in a contested case proceeding." In lieu of the words "(designate office)", insert "the Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309".

[ARC 5042C, IAB 5/20/20, effective 6/24/20]

876—9.8(17A,22,85-87) Notice to suppliers of information.

Insert a new paragraph as follows:

"Information provided under this rule may constitute an open record. The information supplied will be used to administer Iowa Code chapters 85 to 87 and this agency's rules. The information may be provided to parties to contested case proceedings and their representatives, employers, employees, insurance carriers, federal, state, and local agencies, and other persons having a legitimate interest in the information. All of the information requested is required to be supplied unless the request specifies

otherwise. Failure to provide the information requested may result in the sanctions provided in Iowa Code chapters 85 to 87 and this agency's rules. See 876—Chapter 3 for forms used by this agency.”

876—9.9(17A,22,85-87) Disclosure without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(2) If the agency is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

9.9(3) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 876—9.10(17A,22,85-87) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

876—9.10(17A,22,85-87) Routine use.

9.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to the officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local and federal units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Disclosure to the public upon request. The custodian of the record may upon request, or on the custodian's own initiative, determine what constitutes legitimate need to use a record.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

876—9.11(17A,22,85-87) Release to subject.

9.11(1) The subject of a confidential record may file a written request to review confidential records about that subject as provided in rule 876—9.6(17A,22,85-87). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, or what would otherwise be privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

9.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

876—9.12(17A,22,85-87) Availability of records.

9.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

9.12(2) The record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

9.12(3) Records obtained from the division of vocational rehabilitation are open records.

9.12(4) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

b. Tax records made available to the agency pursuant to Iowa Code sections 422.20, 422.72.

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

f. Records which constitute the work product of the workers' compensation commissioner, a deputy workers' compensation commissioner, an agency attorney, or an employee of the agency; attorney-client communications; or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11; Iowa R. Civ. P. 122(c); Fed. R. Civ. P. 26(b)(3); and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Personnel records maintained by the agency of past and present employees which may contain confidential information under Iowa Code section 22.7(11).

h. Any other records made confidential by law.

9.12(5) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 876—9.4(17A,22,85-87). If the

agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

[ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—9.13(17A,22,85-87) Personally identifiable information.

9.13(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 876—9.1(17A,22,85-87). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapters 17A, 22, and 85 to 87. The record systems maintained by the agency are:

a. Records submitted to and gathered by the division of workers' compensation pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules regarding claims for workers' compensation benefits. These records are stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain medical records, briefs, depositions, transcripts of evidence, pictures, diagrams, exhibits, charts, employer records, insurance carrier records, vocational rehabilitation records, attorney records, court records, correspondence, claim form data, wage records, docket sheets, memoranda, attorney or staff notes, research material, witness information, documents, case management records, investigation materials, and any other records obtained pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

b. Records which constitute the work product of an employee of the agency pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. Some of these records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. These files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

d. Other groups of records. This subrule describes groups of records maintained by the agency other than record systems as defined in rule 876—9.1(17A,22,85-87). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 876—9.12(17A,22,85-87). The records listed may contain information about persons.

(1) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(2) Agency records. Agendas, minutes, and materials presented to the division of workers' compensation are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Agency records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 85A.2(4). These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing various agency programs are available at the administrative office of the agency. Agency news releases, project reports, and

newsletters may contain information about persons, including agency staff or members of agency committees. Most publications of general interest are available in the state law library. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(4) Statistical reports. Reports of agency data are available from the agency. Statistical reports may contain personally identifiable information. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(5) Decisions and opinions. All records of contested case proceedings, decisions, orders, rulings, settlements, and opinions are open to the public. These records contain information about a person collected under the authority of Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(6) Declaratory rulings and declaratory orders. Records may contain information about persons making requests for declaratory rulings, declaratory orders or comments from other persons concerning the rulings or orders. This information is collected pursuant to Iowa Code section 17A.9. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(7) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(8) Policy manuals. The agency employees' manuals are available in the administrative office of the agency. Subscriptions to all or part of the employees' manuals are available at the cost of production and handling. Requests for subscription information should be addressed to the Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309. Policy manuals may contain confidential information under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

(9) All other records that are not exempted from disclosure by law.

e. Other records used by the agency which may not otherwise be accounted for by these rules include correspondence files, surveys, information and data files, requests for review of open records, budget documents, agency property, yearly reports, office policy for employees, time sheets, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, vouchers, requisitions, charge accounts, order, etc.). Some of these records may contain information about persons.

9.13(2) Data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[ARC 5042C, IAB 5/20/20, effective 6/24/20]

876—9.14(17A,22,85-87) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject, person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code chapters 17A, 22, 85, 85A, 85B, 86, and 87.

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[Filed ARC 6841C (Notice ARC 6701C, IAB 11/30/22), IAB 2/8/23, effective 3/15/23]

CHAPTER 11
ELECTRONIC DATA INTERCHANGE (EDI)

876—11.1(85,86) Purpose. The purpose of this chapter is to establish the procedure for fulfilling reporting requirements of the division of workers' compensation.

876—11.2(85,86) Definitions. The following definitions apply to 876—Chapter 3 and this chapter.

“EDI” or *“electronic data interchange”* means electronic transmission or reception, or both, of data through a telecommunications process utilizing a value-added network or the Internet as set forth in the EDI partnering agreement.

“EDI partnering agreement” means the written agreement between an entity and the division of workers' compensation specifying the terms and manner of reporting by EDI.

“Filed” means receipt and acceptance of a report by the division of workers' compensation. A report is considered to be “filed” on the date it is accepted (TA) by the division of workers' compensation. A report that is submitted but rejected (TR) is not considered “filed.”

“Report” means a first report of injury (FROI) or a subsequent report of injury (SROI), or both.

“Reporter” means the person who is responsible for reporting to the division of workers' compensation pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

“Reporting” means submission of claims data and data fields of information of a report.
[ARC 4568C, IAB 7/31/19, effective 7/10/19]

876—11.3(85,86) Form of reporting. The format of EDI reporting must be the current version of the International Association of Industrial Accident Boards and Commissions (IAIABC) Release 3.1 FROI/SROI.

[ARC 4568C, IAB 7/31/19, effective 7/10/19]

876—11.4(85,86) Manner of reporting. The manner of EDI reporting is electronic.

876—11.5(85,86) Voluntary reporting deadline. Rescinded ARC 4568C, IAB 7/31/19, effective 7/10/19.

876—11.6(85,86) Mandatory reporting. All reporters are responsible for reporting by EDI 3.1. A reporter may contract with another entity for reporting, but the reporter is ultimately responsible for reporting. Each reporter or entity reporting on behalf of a reporter must sign an EDI partnering agreement.

[ARC 4568C, IAB 7/31/19, effective 7/10/19; ARC 6841C, IAB 2/8/23, effective 3/15/23]

876—11.7(85,86) Required reports.

11.7(1) A reporter shall file reports as required by Iowa Code sections 86.11, 86.12, and 86.13, 876—subrules 3.1(1) and 3.1(2), this chapter and the partnering agreement. Reports required to be filed include, but are not limited to, the following:

- a. First report of injury (FROI). See 876—subrule 3.1(1);
- b. Subsequent report of injury (SROI). See 876—subrule 3.1(2);
- c. Annual report on every claim that is open on June 30 each year. The annual report shall show all benefits paid since the claim was initiated through June 30 of the current year. A final report shall be filed in lieu of the annual report if the claim is closed and the final report is filed before the date when the annual report is scheduled to be filed; and
- d. Final report filed at the time the claim is closed. The final report indicates that no further benefit payments are contemplated.

11.7(2) A reporter shall file a change to FROI and SROI reports whenever a reporter is made aware that information previously submitted is incorrect. The reporter shall file a change within 45 days after being made aware that previously submitted information is incorrect. Information for which a

change shall be filed includes, but is not limited to, the injured employee's social security number, date of injury, employer's name, and injured employee's name. A reporter shall also correct information used in calculation of the compensation rate including, but not limited to, marital status and number of exemptions, average weekly wage, and compensation rate at the time of the employee's injury. If a final decision by the division of workers' compensation or a court of law changes any of the previously submitted information, the attorney for the employer and insurance carrier shall notify the reporter. The reporter shall file a change within 45 days of the final decision.

[ARC 4568C, IAB 7/31/19, effective 7/10/19]

These rules are intended to implement Iowa Code sections 85.26, 86.8, 86.11, 86.12 and 86.13.

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