State of Iowa

Iowa Administrative Code Supplement

Biweekly
February 14, 2018

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ADMINISTRATIVE CODE EDITOR

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

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

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

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

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IOWA ADMINISTRATIVE CODE

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

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CHAPTER 22
NOTIFICATION AND FEES

61—22.1(537) Purpose. The purpose of these rules is to implement the notification and fees section of the Iowa consumer credit code, Iowa Code sections 537.6201 to 537.6203. The fees collected are used for the administration of the credit code.

61—22.2(537) Applicability.

22.2(1) *Coverage.* The following persons are included within the scope of the notification and fees sections:

a. *"Creditors"* who are engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to Iowa Code section 537.1201. The term "creditors" includes creditors engaged in consumer credit sales, consumer loans, refinancing or consolidation of sales or loans, consumer leases, or consumer rental purchase agreements, as these terms are defined in Iowa Code sections 537.1301 and 537.3604(8).

b. *"Debt collectors,"* as defined in Iowa Code section 537.7102(5), whose acts, practices or conduct is governed by Iowa Code chapter 537 pursuant to 537.1201. Debt collectors whose total debt collected in the preceding calendar year is less than $25,000, and in the current calendar year less than $25,000, are exempt from the notification and fees section of the consumer credit code. The term "debt collectors" is not limited to creditors or debt collectors collecting debts arising from consumer credit transactions, but also includes the collection of debts as that term is defined in Iowa Code section 537.7102(3).

22.2(2) *Exempt parties.* Creditors and debt collectors who are licensed, certified, or otherwise authorized to engage in business by Iowa Code chapter 524, 533, 534, 536, or 536A are exempt from the notification and fees section of the Iowa consumer credit code. Therefore, for purposes of this chapter, the terms "creditors" and "debt collectors" do not include parties exempted by Iowa Code section 537.6201 and this subrule.

61—22.3(537) Definitions.

"Administrator" is defined in Iowa Code section 537.6103.

"Assignee" means a person who purchases consumer credit sales contracts, consumer leases, or consumer loans from a seller, lessor or lender.

"Consumer credit sale" is defined in Iowa Code section 537.1301(12).

"Consumer credit transaction" is defined in Iowa Code section 537.1301(11).

"Consumer lease" is defined in Iowa Code section 537.1301(13).

"Consumer loan" is defined in Iowa Code section 537.1301(14).

"Consumer rental purchase agreement" is defined in Iowa Code section 537.3604(8).

"Creditor" is defined in Iowa Code section 537.1301(17).

"Debt" is defined in Iowa Code section 537.7102(3).

"Debt collection" is defined in Iowa Code section 537.7102(4).

"Debt collector" is defined in Iowa Code section 537.7102(5).

"Lender" is defined in Iowa Code section 537.1301(23).

"Lessor" means a person who issues a consumer lease.

"Seller" is defined in Iowa Code section 537.1301(39).

61—22.4(537) Notification.

22.4(1) *Coverage.* All creditors and debt collectors shall file a notification statement with the administrator. The statement should be filed at the following address: Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319.

22.4(2) *Filing date.* Persons required to file a notification statement shall file within 30 days after commencing business in this state, or within 30 days after April 24, 1991, whichever is applicable, and

thereafter, on or before January 31 of each year. Information filed should be based on the preceding calendar year.

22.4(3) *Contents of notification statement.* The notification statement shall contain all of the information required by Iowa Code section 537.6202.

22.4(4) *Updating.* The notification statement shall be updated annually on or before January 31 of each year. Should information provided in the statement become inaccurate after filing, no further notification is required until the following January 31.

61—22.5(537) Fees. All persons subject to the notification and fees section of the Iowa consumer credit code must pay the following fees:

22.5(1) *Annual fees.* All creditors and debt collectors, including assignees, who are required to file notification statements shall pay to the administrator an annual fee of $10. This fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

22.5(2) *Volume fees.*

a. Sellers, lessors and lenders.

(1) Amount of fee. Sellers, lessors and lenders must also pay an additional fee at the time of filing of $10 for each $100,000, or part thereof exceeding $10,000, of the average unpaid balances of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held by the seller, lessor or lender. Lessors must pay an identical amount on the unpaid scheduled periodic payments for consumer leases. Sellers, lessors and lenders must also pay this amount on unpaid balances held by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed a notification statement are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor or lender. Sellers, lessors and lenders who assign obligations to a party exempt under subrule 22.2(2) need not pay volume fees on these obligations after they have been assigned.

(2) Method of calculation. The average unpaid balance arising from consumer credit transactions for the preceding calendar year is determined by totaling the unpaid consumer credit balances held at the end of each month, including unpaid scheduled periodic payments under consumer leases. Included in this amount are consumer credit transactions assigned to assignees who have not filed notification statements. This total is then divided by 12. The volume fee is determined by taking this amount and assessing $10 on each $100,000 of outstanding credit. Volume amounts exceeding $100,000 by more than $10,000 are counted as an additional $100,000 for the purpose of assessing the volume fee (e.g., an average unpaid balance of $511,000 would generate a $60 volume fee: $10 for each $100,000 in volume, and $10 for the additional $11,000).

b. Assignees.

(1) Amount of fee. Assignees must also pay an additional fee at the time of filing of $10 for each $100,000, or part thereof exceeding $10,000, of the average unpaid balances of obligations arising from consumer credit transactions entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year. Assignees must pay an identical amount on assignments of unpaid scheduled periodic payments of consumer leases.

(2) Method of calculation. The average unpaid balances arising from consumer credit transactions for the preceding calendar year is determined by totaling the unpaid balances at the end of each month, including unpaid scheduled periodic payments under consumer leases. This amount is then divided by 12. The volume fee is determined by taking this total and assessing $10 on each $100,000 of outstanding credit. Volume amounts exceeding $100,000 by more than $10,000 are counted as an additional $100,000 for the purpose of assessing the volume fee.

c. Debt collectors. Debt collectors subject to the notification and fees section of the credit code who are not engaged in consumer credit transactions are exempt from the assessment of volume fees.

22.5(3) *Method of payment.* The annual fee and applicable volume fees are to be included with the notification statement and filed within 30 days after April 24, 1991, and thereafter on or before January 31 of each year. The fees should be made payable to Iowa Consumer Credit Administration Fund.

Creditors shall pay volume fees in the first year of administration of the notification and fees section. These fees shall be calculated on the average unpaid consumer balances for the 1990 calendar year. Creditors may request consideration of alternative methods of calculating volume fees for 1990 if they can demonstrate that their records are not kept in a manner permitting them to calculate the fees as required, and that the alternative method proposed would approximate or exceed the volume fees that would be paid according to the statutory calculation method. All creditors shall comply with the statutory volume fee calculation method beginning with the 1992 notification and fee period.

61—22.6(537) Sanctions. The following sanctions are available to the administrator for use against creditors and debt collectors who are not in compliance with the notification and fees section. These sanctions are cumulative.

22.6(1) *Late charge.* The administrator may collect a late charge of $75 from any party subject to Iowa Code sections 537.6201 to 537.6203 who has failed to pay the required fees in full within 30 days after their due date.

22.6(2) *Civil action.* The administrator may bring a civil action against parties subject to Iowa Code sections 537.6201 to 537.6203 who have failed to file a notification statement or to timely pay their fees in full pursuant to Iowa Code section 537.6113(3). The administrator may request the fees owed, interest on those fees at a rate of 7 percent per annum, the reasonable costs of bringing the action and a civil penalty.

[**ARC 3629C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code sections 537.6201 to 537.6203 and 537.6117.

[Filed 3/1/91, Notice 11/14/90—published 3/20/91, effective 4/24/91]

[Filed ARC 3629C (Notice ARC 3308C, IAB 9/13/17), IAB 2/14/18, effective 3/21/18]

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Former Commerce Commission[250] renamed Utilities Division[199]
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CHAPTER 2
FORMS
[Prior to 10/8/86, Commerce Commission[250]]

199—2.1(17A,474) Documents filed with the utilities board. Documents shall be filed with the board in compliance with the provisions of 199—Chapter 14. Documents filed with the board shall be double spaced, except that long quotations may be single spaced and indented. All documents, except exhibits, shall be formatted so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin. Documents should contain the name and address of the filing party and, if the filing party is represented by an attorney, the name and office address of such attorney. The board may reject a document which does not substantially conform with the foregoing requirements, with a statement of reasons for such rejection. The board may, if it deems appropriate, prescribe different or additional requirements for documents to be filed in a particular proceeding.
[**ARC 3644C**, IAB 2/14/18, effective 3/21/18]

199—2.2(17A,474) Forms. The board has made available on its website, iub.iowa.gov, sample forms of documents routinely filed with the board for various purposes. Except to the extent expressly provided by statute or board rule, the use of any such form is not mandatory, and the forms are intended only as examples. To the extent that any statute or board rule prescribes the content of a document, that provision shall govern notwithstanding any sample form. Subject to any such content requirement established by statute or rule, the board may, if it deems appropriate, prescribe specific content requirements for documents to be filed in a particular proceeding.
[**ARC 1623C**, IAB 9/17/14, effective 10/22/14; **ARC 3644C**, IAB 2/14/18, effective 3/21/18]

199—2.3 Rescinded, effective 9/8/86.

199—2.4(17A,474) Forms. Rescinded **ARC 3644C**, IAB 2/14/18, effective 3/21/18.

These rules are intended to implement Iowa Code sections 474.1, 474.5, 474.6, 474.10, 476.6, 476.8 and 546.7.

[Filed 2/11/76, Notice 7/14/75—published 2/23/76, effective 3/29/76]
[Filed 8/28/81, Notice 7/8/81—published 9/16/81, effective 10/21/81]
[Filed 2/12/82, Notice 10/28/81—published 3/3/82, effective 4/7/82]
[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
[Filed 1/6/89, Notice 7/27/88—published 1/25/89, effective 3/1/89]
[Filed 3/3/89, Notice 8/24/88—published 3/22/89, effective 4/26/89]
[Published 6/17/98 to correct board name]
[Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
[Filed 10/12/00, Notice 8/23/00—published 11/1/00, effective 12/6/00]
[Filed 3/1/01, Notice 7/12/00—published 3/21/01, effective 4/25/01]
[Filed ARC 1623C (Notice ARC 1460C, IAB 5/14/14), IAB 9/17/14, effective 10/22/14]
[Filed ARC 3644C (Notice ARC 3417C, IAB 10/25/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 4
DECLARATORY ORDERS
[Prior to 10/8/86, see Commerce Commission[250]]

199—4.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order shall be those set forth in 199—Chapter 7. Additional requirements applicable to a petition for a declaratory order are established by Iowa Code section 17A.9.

4.1(1) The petitioner shall file a petition for a declaratory order with the board in the manner provided by 199—Chapter 14. A petition is deemed filed when it is received by the board.

4.1(2) The petition shall be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth the following information (a sample form of a petition for a declaratory order is available at the board's website, iub.iowa.gov):

a. The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

b. A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

c. A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;

d. The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and

g. A statement whether the petitioner requests a meeting as provided for by rule 199—4.7(17A).

[Editorial change: IAC Supplement 12/29/10; **ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.2(17A) Notice of petition. Rescinded **ARC 3645C**, IAB 2/14/18, effective 3/21/18.

199—4.3(17A) Intervention. A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth, in addition to the information required by rule 199—7.13(17A,476), the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;

3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and

4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

[Editorial change: IAC Supplement 12/29/10; **ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of that party's position. The board may require that the petitioner file a brief and may request that any intervenor or any other person submit a brief concerning the questions raised.
[**ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.5(17A) Inquiries. Rescinded **ARC 3645C**, IAB 2/14/18, effective 3/21/18.

199—4.6(17A) Service and filing of petitions and other documents. In a proceeding on a request for a declaratory order, except as otherwise provided by law, a party shall file with the board a petition for declaratory order, petition for intervention, brief, or any other document in the manner provided in rule 199—14.16(17A,476) and shall at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law. The party filing a petition shall also file with the board a list of all persons served.
[Editorial change: IAC Supplement 12/29/10; **ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.7(17A) Informal meeting. Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.
[**ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.8(17A) Action on petition. Rescinded **ARC 3645C**, IAB 2/14/18, effective 3/21/18.

199—4.9(17A) Refusal to issue order.

4.9(1) *Grounds.* The board shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

4.9(2) *Content and effect of refusal.* The board's refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.
[**ARC 3645C**, IAB 2/14/18, effective 3/21/18]

199—4.10(17A) Contents of declaratory order—effective date. Rescinded **ARC 3645C**, IAB 2/14/18, effective 3/21/18.

199—4.11(17A) Copies of orders. Rescinded **ARC 3645C**, IAB 2/14/18, effective 3/21/18.

199—4.12(17A) Effect of a declaratory order. The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order shall be binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to subrule 4.6(1), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

A declaratory order shall be effective upon the date of issuance.

[**ARC 3645C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code sections 17A.9 and 476.1.

[Filed 2/11/76, Notice 7/14/75—published 2/23/76, effective 3/29/76]
[Filed 11/16/84, Notice 9/12/84—published 12/5/84, effective 1/16/85]
[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
[Filed 3/3/89, Notice 8/24/88—published 3/22/89, effective 4/26/89]
[Published 6/17/98 to update name and address of board]
[Filed 9/3/99, Notice 5/19/99—published 9/22/99, effective 10/27/99]
[Editorial change: IAC Supplement 12/29/10]
[Filed ARC 3645C (Notice ARC 3418C, IAB 10/25/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 33
NONUTILITY ACTIVITIES—RECORD KEEPING AND COST ALLOCATIONS

199—33.1(476) Applicability. This chapter applies to all rate-regulated gas or electric public utilities.

199—33.2(476) Definitions. All terms used in this chapter shall be defined as the terms are defined in Iowa Code section 476.72 unless further defined in this chapter.

"Exception time reporting" is when an employee works predominantly in either utility or nonutility operations and only reports time worked in the less predominant area.

"Filing threshold" means that the summation of a utility's revenues recorded in FERC accounts 415 and 417 equals 3 percent of a utility's operating revenues recorded in FERC account 400. The revenues in these accounts will be as recorded in the annual FERC Form 1 for electric and combination utilities and FERC Form 2 for gas utilities.

"Fully distributed cost" is a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of utility and nonutility services.

"Incidental activities" are activities that are so closely related to the provision of utility services and limited in scale that it is impracticable to identify separately the costs of such activities.

"Net book value" means the original purchase price net of depreciation.

"Nonproductive work time" is time for which an employee is paid but which is not specifically attributable either to utility or to nonutility operations.

"Positive time reporting" is when productive work time is accounted for and allocated to utility operations or nonutility operations.

"Study time reporting" is when periodic studies are done to determine the amount of productive work time being spent on utility versus nonutility operations.

"Utility operating revenues" are the dollar amounts recorded in FERC account 400.

[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

199—33.3(476) Availability of records.

33.3(1) *Separate records.* A rate-regulated gas or electric public utility receiving revenues for providing nonutility service shall keep and render to the board separate records on the nonutility service.

33.3(2) *Records to be maintained.* The records maintained for each nonutility service and made available for inspection shall include the following: documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; a description of methods used to allocate revenues, expenses, and investments between utility and nonutility operations, including supporting detail; and copies of all filings required by other state and federal agencies.

33.3(3) *Method of inspection.* The records for each nonutility service shall be made available to the board at the principal place of business of the public utility. Notwithstanding rule 199—18.3(476), upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

199—33.4(476) Costing methodology. Costs shall be allocated between utility and nonutility operations using fully distributed cost.

33.4(1) *Cost causation for utility assets.* Each utility shall identify for each asset utilized directly or indirectly, in whole or in part, in the provision of nonutility services: (a) the type of asset; (b) the use of the asset; (c) the proportional utilization of the asset between utility operations and nonutility operations; and (d) the characteristics of the asset that allow proper allocation.

33.4(2) *Cost causation for utility expenses.* Each utility shall identify for each expense account wherein any expense related, directly or indirectly, to the provision of nonutility services is recorded: (a) the function causing the expense to be incurred; (b) the procedure used in performing the function;

(c) the proportional utilization of the function between utility operations and nonutility operations; and
(d) the characteristics of the cost that allow proper allocation.

33.4(3) *Time reporting.* Positive time reporting shall be used whenever possible. In situations where positive time reporting cannot be used, exception time reporting or study time reporting may be used. Nonproductive work time shall be allocated between utility and nonutility operations in proportion to the allocation of productive work time.
[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

199—33.5(476) Cost allocation manuals. Every rate-regulated gas or electric public utility equaling or exceeding the filing threshold in any calendar year shall file with the board a cost allocation manual on or before September 1 of the following year. If the utility has not changed its cost allocation manual since the last filing on September 1, the utility shall file a letter with the board to that effect. In the event the utility has made only minor changes to its manual to reflect new accounts or new affiliates or has modified language, the utility may file only the pages affected together with a cover letter explaining the pages being filed. A utility excused from filing a cost allocation manual for any of the foregoing reasons shall comply with the other requirements of this rule.

33.5(1) *Contents of manuals.* Each cost allocation manual must contain the following information:

a. *Nonutility activities.* A list, the location, and description of all nonutility activities as defined in Iowa Code section 476.72(3).

b. *Incidental activities.* A summary of incidental activities conducted by the utility.

c. *Resource identification.* An identification of the assets and expenses involved directly or indirectly, in whole or in part, in the provision of nonutility services as identified in subrules 33.4(1) and 33.4(2).

d. *Allocation methodology.* A description of the cost allocation methodology, including an overview, explanation, and justification of the details provided in response to paragraphs *"e"* through *"h"* below.

e. *Allocation rationale.* A statement identifying, for each asset and expense account and subaccount identified in compliance with subrules 33.4(1) and 33.4(2), the basis for allocating costs in the account or subaccount to utility and nonutility operations, including any allocation factor used by the utility for this purpose.

f. *Accounts and records.* A description of each account and record used by the utility for financial record keeping for nonutility services, including all subaccounts.

g. *Allocation factors.* A paragraph containing, for each allocation factor identified in compliance with paragraph *"e,"* an explanation of how the allocation factor is calculated, a description of each study and analysis used in developing the allocation factor, and the frequency with which each allocation factor is recalculated.

h. *Time reporting methods.* A paragraph indicating the type of time reporting (positive, exception, or study) used for each reporting organization (e.g., executive, residential sales, and external affairs) and providing a description of how the identified type of time reporting is performed in that reporting organization.

i. *Training.* A description of the training programs used by the utility to implement and maintain its cost allocation process.

j. *Update process.* A description of the procedures used by the utility to: (1) determine when an update is needed; (2) develop the update; and (3) provide the update to the board.

33.5(2) *Annual filing and approval of manuals.* The following procedure shall be used for the annual filing and approval of manuals.

a. *Filing.* A utility meeting the filing threshold shall file a manual on or before September 1 of each year following a year during which the utility met the threshold.

b. *Notice.* At the time of the initial filing and whenever a manual is updated, each utility shall mail or deliver a written notice to consumer advocate, local trade associations, and customers who have notified the utility in writing of their interest in the cost allocation manual. The notice shall state that

an objection may be filed with the board within 60 days of the filing of the manual with the board. The utility shall promptly provide copies of the manual upon request.

c. *Objections.* Any interested person may file with the board an objection to a cost allocation manual within 60 days of the filing date.

d. *Docketing.* If the board finds that reasonable grounds exist to investigate the manual, the board will docket the filing as an investigation within 90 days of the date of filing. At the time of docketing, the board will set a procedural schedule which includes a date for an oral presentation and an opportunity to file comments. If the board finds that there is no reason to investigate, the board shall issue an order stating the reasons for the board's decision within 90 days of the date of filing.

e. *Acceptance of manuals.* The board may accept, reject, or modify a utility's manual. However, any board decision is for accounting purposes only and is not binding in any other proceeding.

33.5(3) *Updating of manuals.* All affected sections and pages of a utility's manual shall be updated and filed with the board within 60 days of any of the following conditions:

a. A new nonutility business is commenced or acquired, or an existing nonutility business is eliminated or divested;

b. An affiliate relationship changes;

c. Operations affecting nonutility businesses change sufficiently to warrant a new allocation method; or

d. Accounting practices change.

33.5(4) *Reporting requirements—accounting tables.* Companies required to file cost allocation manuals shall include in their annual reports tables showing for each account identified in compliance with subrules 33.4(1) and 33.4(2) the following: (a) the account total; (b) the amount allocated to nonutility services; (c) the amount allocated to utility services; and (d) the value of the allocation factors used to allocate costs to utility and nonutility services. Such tables shall be accompanied by a signed statement by an officer of the utility and an independent auditor certifying that, for the year covered by the report, the utility has complied with its cost allocation manual and that the data reported fairly reflect the actual operations of the utility.

[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

199—33.6(476) Standards for costing service transfers within a regulated subsidiary or utility.

33.6(1) *Nonutility service provided to regulated subsidiary or utility.* The utility or its regulated subsidiary shall pay for a nonutility service provided to it by an affiliate at the price actually charged to nonaffiliates. If no such price is available, the service shall be priced at the lower of fully distributed cost, the price actually charged to affiliates, or the market price for comparable services.

33.6(2) *Service provided by the utility to nonutility operations.* A utility that provides utility service to a nonutility affiliate shall charge such affiliate the tariffed price or, if a tariffed price is not available, shall charge the fully distributed cost of the service.

[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

199—33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility.

33.7(1) If an asset that is a direct cost of nonutility operations becomes a cost of utility operations, the asset shall be transferred or allocated to utility operations at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

33.7(2) If an asset that is a direct cost of utility operations becomes a cost of nonutility operations, the asset shall be transferred or allocated to the nonutility operations at the greater of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

[**ARC 3646C**, IAB 2/14/18, effective 3/21/18]

[Filed 11/10/93, Notice 8/4/93—published 12/8/93, effective 1/12/94]

[Filed 6/6/03, Notice 12/25/02—published 6/25/03, effective 7/30/03]

[Filed ARC 3646C (Notice ARC 3456C, IAB 11/22/17), IAB 2/14/18, effective 3/21/18]

EDUCATION DEPARTMENT[281]

Created by 1986 Iowa Acts, chapter 1245, section 1401.
Prior to 9/7/88, see Public Instruction Department[670]
(Replacement pages for 9/7/88 published in 9/21/88 IAC)

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CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

[Prior to 9/7/88, see Public Instruction Department[670] Ch 8]

281—32.1(259A) Purpose. The department may issue a high school equivalency diploma to a person who presents satisfactory evidence of having completed an approved high school course of study aligned with standards established by the state board of education by which high school graduation equivalency may be determined. The purpose of the high school equivalency diploma is to provide a credential to adults who have not graduated from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

This chapter is intended to implement the provisions of Iowa Code chapter 259A.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.2(259A) Definitions. As used in this chapter:

"Adult education and literacy program" means the same as defined in rule 281—23.1(260C).

"Approved program" means any defined option established under this chapter for the completion of a high school equivalency diploma that has been approved by the department.

"Approved test" means the entire battery of subtests given under a high school equivalency test adopted by the department and administered at department-approved testing sites.

"Contact hour" means the same as defined in 281—subrule 21.2(12).

"Continuous enrollment" means a participant has not exited from the approved program as defined in the federal Workforce Innovation and Opportunity Act (WIOA 34 CFR 361.150(c)) or subsequent federal workforce training and adult education legislation.

"Demonstrated competence" means the ability to apply the knowledge and skills required to perform critical functions specific to a program of study. Competencies that measure the attainment of the knowledge, skills, and abilities equivalent to a high school program of study shall be aligned with content standards for adult education as referenced in 281—paragraph 23.7(1)*"c"* and twenty-first century learning skills.

"Department" means the Iowa department of education.

"Eligible institution" means an entity as defined in 281—subrule 23.3(1).

"High school credit" means credit awarded for the successful completion of a secondary course or demonstrated competence equivalent to one-half Carnegie unit as defined in 281—subrule 12.5(14).

"High school equivalency diploma" means the credential granted by the department to adults who did not graduate from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of the knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

"Resident" means an individual who satisfies the requirements of 281—subrule 21.2(11).

"Twenty-first century learning skills" means the same as defined in 281—subrule 12.5(17).

"Work-site learning" means a planned and supervised work experience, equivalent to the training services defined in the federal Workforce Innovation and Opportunity Act, Section 134(c)(3)(D), or subsequent federal workforce training and adult education legislation, that is in compliance with workplace laws and regulations, including the minimum wage requirements prescribed by Iowa law or the federal Fair Labor Standards Act, if applicable.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.3(259A) Eligibility to participate.

32.3(1) Minimum age. No one under 16 years and 9 months of age is allowed to participate in an approved program, with the exception of a person who is at least 16 years of age and satisfies one or more of the following conditions:

a. Is a resident of an Iowa juvenile institution;

b. Is an active participant in Job Corps; or

c. Is under the supervision of a probation office.

32.3(2) Anyone 16 years and 9 months of age or older who is not enrolled in a secondary school nor is a high school graduate is permitted to apply for enrollment in an approved program. The requirements for admission into an approved program are:

a. Proof of age and, for an applicant under 18 years of age, consent of the applicant's parent or guardian.

b. For an applicant under 19 years of age, verification of nonenrolled status from the last high school attended.

c. Completion of a comprehensive intake by an eligible institution. For purposes of this chapter, the intake must include all of the following:

(1) Assessment of the applicant's reading level and career interests and aptitudes.

(2) Discussion of program options available to the applicant regarding completion of a high school equivalency diploma, to include the requirements, expectations, benefits, and limitations of each option.

(3) Development of a plan for the completion of one of the options discussed and subsequent activities necessary to work toward an identified goal, career pathway, occupation, or further education.

32.3(3) An eligible participant who successfully completes an approved program will not be awarded a high school equivalency diploma until the participant reaches 18 years of age and the participant's ninth grade class has graduated from high school.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.4(259A) By whom administered. An approved program shall be administered by an eligible institution. An eligible institution may provide one or more approved programs. The department shall maintain a process by which an eligible institution may submit an application to offer an approved program.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.5(259A) Diploma, transcript, verification fees. Upon payment to the department or its designee of a fee for the actual cost of production and distribution of a high school equivalency diploma, transcript, or verification letter not to exceed $10 per document, the department shall issue a high school equivalency diploma, transcript, or verification letter to an applicant who has achieved the minimum standards established in this chapter. Upon payment to the department or its designee of a fee for the actual cost of verification and issuance of a duplicate diploma, transcript, and verification letter not to exceed $15, the department or its designee shall issue a duplicate diploma, transcript, or provide verification to the applicant or person authorized by the applicant to request these documents. Approved providers must track and submit to the department evidence of the applicant's completion of the program requirements for the issuance of a high school equivalency diploma.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.6(259A) Application, course, and testing fees. The applicant or the applicant's supporting agency shall pay an application, course, or testing fee to cover only necessary and reasonable testing or program costs. Fees paid directly to an approved program are considered program income and shall adhere to the federal Office for Management and Budget Uniform Guidance cost principles, as codified in 2 CFR Section 200.80.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.7(259A) High school equivalency diploma program based on a department-approved test. The department shall award a high school equivalency diploma to an applicant who achieves the appropriate minimum standard scores on an approved test.

32.7(1) *Validity of test scores.* Scores on an approved test shall remain valid for a period of five years from the date of the first subtest taken. If an applicant has not earned a high school equivalency diploma within this five-year period, the applicant must retake any expired subtest. The only exception is for test series that expire prior to the five-year period, in which case all previously taken subtests are void and must be retaken.

32.7(2) *Retest.* Any applicant not achieving the minimum standard test score on any subtest in effect at the time of testing shall be permitted to apply for retest. Applicants may retest twice per calendar year, provided one of the following conditions is met:

a. A period of three months from the date of initial testing has elapsed; or

b. The applicant completes instruction in an adult education and literacy program in each subject area to be retested. This instruction shall be certified by an official of the adult education and literacy program provider to the test administrator authorized to release the retest.

[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.8(259A) High school equivalency diploma program based on attainment of high school credits. The department shall award a high school equivalency diploma to an applicant who demonstrates completion of an approved program consisting of at least 36 high school credits. The approved program shall be inclusive of the graduation requirements established under 281—subrule 12.5(5) and consist of at least eight high school credits in English or communications; six credits in mathematics; six credits in science; six credits in social studies, including government; and ten elective credits that meet the requirements of subrule 32.8(4).

32.8(1) *Award of prior credit.* The applicant shall provide certified, translated transcripts from any Iowa school district, accredited public or nonpublic high school, or regionally accredited college or university to document completion of credits earned that are equivalent to those required in an approved program established under this rule. Additional documentation may be requested to validate credits earned.

32.8(2) *Minimum participation requirement.* An eligible applicant must demonstrate competence through continuous enrollment in an approved program for a minimum of two high school credits.

32.8(3) *Minimum graduation requirements.* If the applicant is not continuously enrolled in an approved program, the applicant will become subject to the minimum graduation requirements applicable to the date of reenrollment.

32.8(4) *Electives.*

a. Coursework for electives shall align with twenty-first century learning skills and be classified in one of the following five areas:

(1) Civic literacy;

(2) Health literacy;

(3) Technology literacy;

(4) Financial literacy;

(5) Employability skills.

b. Work-site learning may be counted toward an elective, under the following conditions:

(1) Evidence of prior work-site learning shall be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for prior work-site learning shall not be counted toward the minimum participation requirement, as described in subrule 32.8(2).

(2) Current work-site learning shall be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for current work-site learning may be counted toward the minimum participation requirement, as described in subrule 32.8(2).

32.8(5) *Postsecondary credit.* Credit awarded by a regionally accredited postsecondary institution for the successful completion of a course that applies toward the requirements of a postsecondary credential, including but not limited to a certificate, diploma, or associate, bachelor, or graduate-level degree program, shall be accepted to fulfill the requirements for the satisfactory completion of a program as follows:

a. One postsecondary semester credit or its equivalent shall be equal to one-third high school credit. The resulting high school credit can be used to satisfy either a core or elective credit requirement of an approved program.

b. Twenty contact hours of noncredit postsecondary coursework shall be equal to one-third high school credit provided the coursework is aligned to regional career pathways and occupational needs. This credit can be used to satisfy an elective credit requirement of an approved program.
[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.9(259A) High school equivalency diploma program based on postsecondary degree. The department shall award a high school equivalency diploma to a resident applicant who presents an associate degree or higher that includes general education coursework and is awarded by a regionally accredited postsecondary institution. The applicant must provide official transcripts to an adult education and literacy program to document completion of program requirements.
[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

281—32.10(259A) High school equivalency diploma program based on foreign postsecondary degree. The department shall award a high school equivalency diploma to a resident applicant who presents a postsecondary degree equivalent to an associate degree or higher, provided that the following conditions are met:

32.10(1) The applicant presents to an adult education and literacy program an official transcript from an institution of higher education attesting to the completion of the program of study required for the postsecondary degree. If the transcript is not in English, the applicant shall also provide a certified translation.

32.10(2) The applicant shall be a United States citizen or shall meet both of the following requirements:

a. Demonstrates proficiency in speaking, listening, reading, and writing as defined by the department's approved English language proficiency standards; and

b. Has successfully completed a course in government or civics education as a component of an approved program.
[**ARC 3630C**, IAB 2/14/18, effective 3/21/18]

[Filed 10/6/65, amended 9/18/69, 7/12/72]
[Filed 11/20/81, Notice 8/19/81—published 12/9/81, effective 1/13/82]
[Filed 12/13/85, Notice 11/6/85—published 1/1/86, effective 2/5/86]
[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]
[Filed ARC 9903B (Notice ARC 9683B, IAB 8/24/11), IAB 12/14/11, effective 1/18/12]
[Filed ARC 0688C (Notice ARC 0510C, IAB 12/12/12), IAB 4/17/13, effective 5/22/13]
[Filed ARC 3630C (Notice ARC 3365C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

281—83.1(284,284A) Purposes. The goal of the teacher quality program is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers. The program shall contain specific strategies that include mentoring for beginning teachers as described in rule 281—83.3(284), either in subrule 83.3(1) or 83.3(2), teacher evaluations, and district and building support for professional development that includes best practice aimed at increasing student achievement.

The goal of the administrator quality program is to promote high student achievement and enhanced educator quality. The program consists of mentoring and induction programs that provide support for administrators, professional development designed to directly support best practice for leadership, and evaluation of administrators against the Iowa standards for school administrators.

[**ARC 3631C**, IAB 2/14/18, effective 3/21/18]

281—83.2(284,284A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Administrator" or *"school leader"* means an individual holding a professional administrator license issued under Iowa Code chapter 272, who is employed in a school district administrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.23. An administrator may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time administrator for the portion of time that the individual is employed in an administrative position.

"Beginning administrator" means an individual serving under an administrator license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a school district principal or superintendent for the first time.

"Beginning teacher" means an individual serving under an initial, Class A, exchange, or intern license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5 or in an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15, "beginning teacher" also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

"Comprehensive evaluation" means, with respect to a beginning teacher, a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher's level of competency relative to the Iowa teaching standards and for recommendation for licensure based upon models developed pursuant to Iowa Code section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career teacher. With respect to a beginning administrator, "comprehensive evaluation" means a summative evaluation of a beginning administrator conducted by an evaluator in accordance with 2007 Iowa Code Supplement section 284A.3 for purposes of determining a beginning administrator's level of competency for recommendation for licensure based on the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Department" means the department of education.

"Director" means the director of the department of education.

"District facilitator" means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

"Evaluator" means an administrator or other practitioner who successfully completes an evaluator training program pursuant to Iowa Code section 284.10.

"Intensive assistance" means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

"Leadership standards" are synonymous with the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Mentor" means, with respect to a beginning teacher, an individual employed by a school district or area education agency as a teacher or a retired teacher who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a nonprobationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers. With respect to a beginning administrator, "mentor" means an individual employed by a school district or area education agency as a school district administrator or a retired administrator who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful administrative experience and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning administrators.

"Performance review" means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher's practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher's practice meets school district expectations for career advancement in accordance with Iowa Code section 284.7.

"School board" means the board of directors of a school district, a collaboration of boards of directors of school districts, or the board of directors of an area education agency, as the context requires.

"School district" means a public school district.

"State board" means the state board of education.

"Teacher" means an individual holding a practitioner's license or a statement of professional recognition issued under Iowa Code chapter 272, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09; **ARC 9265B**, IAB 12/15/10, effective 1/19/11; **ARC 3631C**, IAB 2/14/18, effective 3/21/18]

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

281—83.3(284) Mentoring and induction program for beginning teachers.

83.3(1) *Option one: beginning teacher mentoring and induction program.*

a. Purpose. The beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Completion of a beginning teacher mentoring and induction program is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).

b. Participation. School districts and area education agencies may provide a beginning teacher mentoring and induction program for all beginning teachers. A beginning teacher, as defined in this chapter, shall be informed by the school district or area education agency, prior to the beginning teacher's participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district or area education agency shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a school district or area education agency prior to completion of the program, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

(2) A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's or area education agency's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district or area education agency shall participate in state program evaluations.

c. *Plan.* Each school district or area education agency that offers a beginning teacher mentoring and induction program shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21. A school district or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

(1) Goals for the program.

(2) A process for the selection of mentors.

(3) A mentor training process which shall:

1. Be consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.

2. Address mentor needs, indicating a clear understanding of the role of the mentor.

3. Result in the mentor's understanding of the personal and professional needs of new teachers.

4. Provide the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.

5. Facilitate the mentor's ability to provide guidance and support to new teachers.

(4) A supportive organizational structure for beginning teachers which shall include:

1. Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:

• Released time for mentors and beginning teachers to plan;

• The demonstration of classroom practices;

• The observation of teaching; and

• Feedback.

2. A selection process for who will be in the mentor/beginning teacher partnership.

3. Roles and responsibilities of the mentor.

(5) An evaluation process for the program, which shall include:

1. An evaluation of the district and area education agency program goals,
2. An evaluation process that provides for the minor and major program revisions, and
3. A process for how information about the program will be provided to interested stakeholders.

(6) The process for dissolving mentor and beginning teacher partnerships.

(7) A plan that reflects the needs of the beginning teacher employed by the district or area education agency.

(8) Activities designed to support beginning teachers by:

1. Developing and enhancing competencies for the Iowa teaching standards, and
2. Providing research-based instructional strategies.

d. *Budget.* Funds, if appropriated by the general assembly, received by a school district or area education agency from the beginning teacher mentoring and induction program shall be used for any or all of the following purposes:

(1) To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of $500 per semester for full participation in the program. A district or area education agency may use local dollars to increase the mentor award.

(2) To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency.

These funds are miscellaneous funds or are considered encumbered. A school district or area education agency shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

83.3(2) *Option two: teacher leadership and compensation system.*

a. *Purpose.* One purpose of Iowa's teacher leadership and compensation system is to attract able and promising new teachers by offering short-term and long-term professional development and leadership opportunities. Two years of successful teaching experience in a school district with an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15 ("framework for beginning teachers" for purposes of this rule) is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).

b. *Participation.* School districts may provide an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15. A beginning teacher, as defined in this chapter, shall be informed by the school district, prior to the beginning teacher's participation in a framework for beginning teachers, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a framework for beginning teachers leaves the employ of a school district prior to completion of the framework, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in such a framework prior to the subsequent hiring.

(2) A school district may offer a teacher a third year of participation in a framework for beginning teachers if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully meet the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's framework for beginning teachers. The school district shall notify the board of educational examiners that the teacher will participate in a third year of the school

district's framework for beginning teachers. The teacher shall undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district shall participate in state program evaluations.

c. Plan assurances. Each school district that offers a framework under Iowa Code sections 284.15 through 284.17 and uses it for purposes of meeting the school district's obligations to beginning teachers shall provide assurances to the department that the district's framework for beginning teachers meets the requirements of those Iowa Code sections and attends to the Iowa teaching standards and criteria described in rule 281—83.4(284).

d. Inapplicability to area education agencies. This subrule and the option created by it are not available to area education agencies. Only subrule 83.3(1) is available to area education agencies; however, a teacher employed by an area education agency may be included in a framework or comparable system established by a school district if the area education agency and the school district enter into a contract for such purpose.

[**ARC 3631C**, IAB 2/14/18, effective 3/21/18]

281—83.4(284) Iowa teaching standards and criteria. The Iowa teaching standards and supporting criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective teaching. The purpose of the standards and supporting criteria is to provide Iowa school districts and area education agencies with a consistent representation of the complexity and the possibilities of quality teaching. The standards shall serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with supporting criteria is outlined as follows:

83.4(1) Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

a. The teacher:

(1) Provides multiple forms of evidence of student learning and growth to students, families, and staff.

(2) Implements strategies supporting student, building, and district goals.

(3) Uses student performance data as a guide for decision making.

(4) Accepts and demonstrates responsibility for creating a classroom culture that supports the learning of every student.

(5) Creates an environment of mutual respect, rapport, and fairness.

(6) Participates in and contributes to a school culture that focuses on improved student learning.

(7) Communicates with students, families, colleagues, and communities effectively and accurately.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses knowledge and understanding of the area education agency's mission, goals, and strategic priorities to provide services that enhance academic performance.

(2) Understands and uses knowledge of area education agency and district goals and data to provide services that enhance academic performance.

(3) Participates in and contributes to a positive learning culture.

(4) Communicates with students, families, colleagues, and communities effectively and accurately.

(5) Uses area education agency, district, and student data as a guide for decision making.

83.4(2) Demonstrates competence in content knowledge appropriate to the teaching position.

a. The teacher:

(1) Understands and uses key concepts, underlying themes, relationships, and different perspectives related to the content area.

(2) Uses knowledge of student development to make learning experiences in the content area meaningful and accessible for every student.

(3) Relates ideas and information within and across content areas.

(4) Understands and uses instructional strategies that are appropriate to the content area.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Understands, communicates, and uses key concepts and best practice in fulfillment of area education agency roles and responsibilities.

(2) Uses knowledge of child and adolescent development and of adult learning to make interventions and strategies meaningful, relevant, and accessible.

(3) Relates professional knowledge and services within and across multiple content and discipline areas.

(4) Understands and supports strategies and interventions that are best practice across content and discipline areas.

83.4(3) Demonstrates competence in planning and preparing for instruction.

a. The teacher:

(1) Uses student achievement data, local standards, and the district curriculum in planning for instruction.

(2) Sets and communicates high expectations for social, behavioral, and academic success of all students.

(3) Uses students' developmental needs, backgrounds, and interests in planning for instruction.

(4) Selects strategies to engage all students in learning.

(5) Uses available resources, including technologies, in the development and sequencing of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates the ability to organize and prioritize time, resources, and responsibilities.

(2) Demonstrates the ability to individually and collaboratively plan and prepare professional services that address the range of district, teacher, parent, and student needs.

(3) Uses district and student data to develop goals and interventions.

(4) Demonstrates the flexibility to plan for professional services based on changing conditions of the work context and environment.

(5) Uses available resources, including technology, to plan and develop professional services.

83.4(4) Uses strategies to deliver instruction that meets the multiple learning needs of students.

a. The teacher:

(1) Aligns classroom instruction with local standards and district curriculum.

(2) Uses research-based instructional strategies that address the full range of cognitive levels.

(3) Demonstrates flexibility and responsiveness in adjusting instruction to meet student needs.

(4) Engages students in varied experiences that meet diverse needs and promote social, emotional, and academic growth.

(5) Connects students' prior knowledge, life experiences, and interests in the instructional process.

(6) Uses available resources, including technologies, in the delivery of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Aligns service delivery to district, teacher, parent, and student needs.

(2) Provides consultation, instruction, interventions, and strategies that align with learner needs.

(3) Demonstrates flexibility and responsiveness in adjusting services to meet diverse learner needs.

(4) Uses and supports research-based and evidence-based practices to meet learner needs.

(5) Uses available resources, including technology, to provide professional services that meet learner needs.

83.4(5) Uses a variety of methods to monitor student learning.

a. The teacher:

(1) Aligns classroom assessment with instruction.

(2) Communicates assessment criteria and standards to all students and parents.

(3) Understands and uses the results of multiple assessments to guide planning and instruction.

(4) Guides students in goal setting and assessing their own learning.

(5) Provides substantive, timely, and constructive feedback to students and parents.

(6) Works with other staff and building and district leadership in analysis of student progress.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses appropriate assessment, data collection, and data analysis methods that support alignment of services with learner needs.

(2) Works collaboratively within the learning community to establish measurable goals and to identify formative and summative methods to monitor progress and the quality of implementation.

(3) Communicates the rationale and criteria of assessment and monitoring methods.

(4) Elicits and provides timely and quality feedback on assessment and monitoring.

83.4(6) Demonstrates competence in classroom management.

a. The teacher:

(1) Creates a learning community that encourages positive social interaction, active engagement, and self-regulation for every student.

(2) Establishes, communicates, models, and maintains standards of responsible student behavior.

(3) Develops and implements classroom procedures and routines that support high expectations for student learning.

(4) Uses instructional time effectively to maximize student achievement.

(5) Creates a safe and purposeful learning environment.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Models respectful dialogue and behaviors within and across job responsibilities.

(2) Promotes and maintains a positive, safe, and productive environment.

(3) Works collaboratively and is flexible.

(4) Communicates accurately and effectively.

83.4(7) Engages in professional growth.

a. The teacher:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practice and student learning.

(3) Applies research, knowledge, and skills from professional development opportunities to improve practice.

(4) Establishes and implements professional development plans based upon the teacher's needs aligned to the Iowa teaching standards and district/building student achievement goals.

(5) Provides an analysis of student learning and growth based on teacher-created tests and authentic measures as well as any standardized and districtwide tests.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practices.

(3) Applies and shares research, knowledge, and skills from professional development.

(4) Establishes and implements professional development plans aligned to area education agency, district, and student learning goals.

83.4(8) Fulfills professional responsibilities established by the school district.

a. The teacher:

(1) Adheres to board policies, district procedures, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and district policy.

(3) Contributes to efforts to achieve district and building goals.

(4) Demonstrates an understanding of and respect for all learners and staff.

(5) Collaborates with students, families, colleagues, and communities to enhance student learning.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Adheres to board policies, area education agency procedures, federal and state rules, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and area education agency policies.

(3) Contributes to efforts to achieve area education agency goals.

(4) Demonstrates an understanding of and respect for all learners.

(5) Collaborates with all learners.

83.4(9) The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284).

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10; **ARC 3631C**, IAB 2/14/18, effective 3/21/18]

281—83.5(284) Evaluator approval training. The department shall approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department shall qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs shall be designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews as required by Iowa Code chapter 284, and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators shall incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

83.5(1) *Application requirements for providers of evaluator approval training.* Approved applications for the provision of evaluator approval training shall include, but are not limited to, the following components:

a. A curriculum that addresses participant skill development in the areas of:

(1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;

(2) The use of multiple forms of data collection for identifying and supporting performance and development;

(3) The understanding and development of conferencing and feedback skills; and

(4) The development of skills in data-based decision making.

b. Demonstration that the evaluator approval training process design provides training as specified in this rule.

c. A description of the process used to deliver the training to participants.

d. A description of the procedures developed to certify the skill attainment of the evaluator being trained.

e. A budget.

f. Staff qualifications.

g. Evidence of the provider's expertise in evaluation design and training processes.

h. Provisions for leadership to support and implement ongoing professional development focused on student learning.

i. A process that evaluates the effectiveness of the implementation of the training process and demonstrates that the trainees have attained the knowledge and skills as described in paragraph *"a."* This evaluation shall be conducted on an annual basis and submitted to the department.

83.5(2) *Process used for the approval of evaluator approval training program applications.* Eligible providers shall submit an application on forms prescribed by the department. Applications for new providers will be accepted and reviewed by the department by July 1 of each year. A review panel shall be convened to review applications for evaluator approval training programs based on the requirements listed in subrule 83.5(1). The panel shall recommend for approval and the department shall approve the evaluator approval training programs that meet the requirements listed in subrule 83.5(1). Applicants

shall be notified of their status within 30 days of the application deadline. An approved list of private providers shall be maintained on the department website with an annual notification to school districts and area education agencies of the website address that contains provider information.

Eligible providers may be public or private entities, including, but not limited to, school districts, consortia, and other public or private entities including professional organizations. Applicants shall meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner preparation institutions shall meet the review process through the state board approval and accreditation process for these institutions.

83.5(3) *Local teacher evaluation plans.* Local districts and area education agencies shall develop and implement a teacher evaluation plan that contains the following components:

a. The use of the Iowa teaching standards and criteria;

b. Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and the use of the comprehensive evaluation instrument developed by the department;

c. Provisions for reviews of the performance of teachers other than beginning teachers as follows:

(1) Review once every three years by an evaluator to include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria if established under subrule 83.4(9), a review of the implementation of the teacher's individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; and

(2) Review annually, other than the third-year review by an evaluator, by a peer group of teachers in accordance with Iowa Code section 284.8(1);

d. Provisions for individual professional development plans for teachers other than beginning teachers;

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(8).

(1) If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(8), the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.

(2) A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to paragraph 83.5(3)*"e"* shall participate in an intensive assistance program. However, a teacher who has previously participated in an intensive assistance program relating to particular Iowa teaching standards or criteria shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria and shall be subject to the provisions of paragraph 83.5(3)*"f."*

f. Following a teacher's participation in an intensive assistance program, the teacher shall be reevaluated to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the board may do any of the following:

(1) Terminate the teacher's contract immediately pursuant to Iowa Code section 279.27.

(2) Terminate the teacher's contract at the end of the school year pursuant to Iowa Code section 279.15.

(3) Continue the teacher's contract for a period not to exceed one year. However, the contract shall not be renewed and shall not be subject to Iowa Code section 279.15.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09; **ARC 0524C**, IAB 12/12/12, effective 1/16/13; **ARC 3631C**, IAB 2/14/18, effective 3/21/18]

281—83.6(284) Professional development for teachers.

83.6(1) *Professional development for school districts, area education agencies, and attendance centers.* The following requirements shall apply to professional development for school districts, area education agencies, and attendance centers.

a. Professional learning standards. Professional learning within an area education agency or local district shall be aligned with the state standards for teaching and learning and aligned to the following standards for professional development. Professional learning increases educator effectiveness and results for all students when it:

(1) Occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.

(2) Requires skillful leaders to develop capacity, advocate, and create support systems for professional learning.

(3) Prioritizes, monitors, and coordinates resources for educator learning.

(4) Uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate effectiveness of instruction.

(5) Integrates theories, research, and models of human learning to achieve intended outcomes.

(6) Applies research on change and sustains support for implementation of professional learning for long-term change.

(7) Aligns its outcomes with educator performance and student curriculum standards.

b. District or area education agency professional development plan. Each school district shall incorporate the district professional development plan into its comprehensive school improvement plan pursuant to Iowa Code subsection 284.6(3). Each area education agency shall develop a professional development plan for the agency as a whole and shall incorporate the plan into its comprehensive improvement plan pursuant to rule 281—72.9(273). The district or area education agency professional development plan shall be a long-term plan designed and implemented to increase student achievement and shall include all on-site and district or area education agency personnel responsible for instruction. The district or area education agency professional development plan shall contain, but not be limited to, the following:

(1) Implementation of a school district's or area education agency's plan for professional learning.

(2) Documentation that the professional development is based on student data, aligned with district or attendance center student achievement goals, and focused on instruction, curriculum, and assessment.

(3) The study and implementation of research-based instructional strategies that improve teaching and learning.

(4) Collaborative inquiry into the area of greatest student learning need.

(5) Research-based training strategies (e.g., theory, demonstration, observation, practice, coaching, reflection, evaluation) that promote transfer and positive outcomes as needed for learning new practices.

(6) Allocation of time to collectively study content, instruction, and impact so necessary adjustments can be made to ensure student success.

(7) Accountability and an evaluation that documents improvement of practice and the impact on student learning.

c. Attendance center professional development plans. Each attendance center within a school district shall develop an attendance center professional development plan as a means of promoting group professional development. An attendance center professional development plan shall further the needs of personnel responsible for instruction in the attendance center and shall enhance the student achievement goals of the attendance center and the goals of the district.

d. Individual professional development plans. The school district and area education agency shall support the development and implementation of the individual teacher professional development plan for each teacher as outlined in subrule 83.6(2). Each individual teacher professional development plan shall align to the fullest extent possible with the district professional development plan.

e. Beginning teacher mentoring and induction. A school district shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.3(1) or a framework for beginning teachers as outlined in subrule 83.3(2). The district's beginning teacher mentoring

and induction plan or framework for beginning teachers shall align with the district professional development plan described in paragraph 83.6(1)*"b."* An area education agency shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.3(1), which shall align with the area education agency's professional development plan described in paragraph 83.6(1)*"b."*

f. Organizational support for professional development. The school district shall provide resources and support for the district professional development plan, including opportunities for professional development, time for collaborative work of staff, budgetary support, and policies and procedures that reflect the district's commitment to professional development.

83.6(2) *Individual teacher professional development plan.* Each school district and area education agency shall support the development and implementation of individual teachers' professional development plans for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective professional development. At a minimum, the goals for an individual teacher professional development plan must be based on the needs of the teacher and on the relevant Iowa teaching standards that support the student achievement goals of the teacher's classroom or classrooms, attendance center and school district or area education agency, as appropriate, as outlined in the comprehensive school improvement plan. The goals shall go beyond those required under the attendance center professional development plan described in paragraph 83.6(1)*"c."* The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined or area education agency-determined content to the extent possible. The individual plan shall be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting shall be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

83.6(3) *Professional development provider requirements.*

a. A provider may be a school district; an area education agency; a higher education institution; a public or private entity including a professional organization that provides long-term, ongoing support for the district's or area education agency's professional development plan; or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Providers that are not currently accredited or approved through state accreditation procedures must follow approval procedures identified in the district's or area education agency's professional development plan. The potential provider must submit to the school district or area education agency a written application that provides the following documentation:

(1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in paragraph 83.6(1)*"a."*

(2) How the provider intends to assist the local district or area education agency in designing, implementing, and evaluating professional development that meets the requirements established in paragraph 83.6(1)*"b."*

(3) A description of the qualifications of the provider.

(4) Evidence of the provider's expertise in professional development.

(5) A budget.

(6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10; **ARC 1435C**, IAB 4/30/14, effective 6/4/14; **ARC 3631C**, IAB 2/14/18, effective 3/21/18]

281—83.7(284) Teacher quality committees. Each school district and area education agency shall create a teacher quality committee pursuant to 2007 Iowa Code Supplement section 284.4. The committee is subject to the requirements of the Iowa open meetings law (Iowa Code chapter 21). To the extent possible, committee membership shall have balanced representation with regard to gender. The committee shall do all of the following:

1. Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to Iowa Code chapter 20.

2. Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. The committee shall develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.

3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in 2007 Iowa Code Supplement section 284.13, subsection 1, paragraph *"d,"* based upon school district or agency, attendance center, and individual teacher professional development plans.

4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.

5. Determine the compensation for teachers on the committee for work responsibilities required beyond the normal workday.

6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

[**ARC 3631C**, IAB 2/14/18, effective 3/21/18]

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

281—83.8(284A) Administrator quality program. An administrator quality program is established to promote high student achievement and enhanced educator quality. The program shall consist of the following four major components:

1. Adherence to the Iowa school leadership standards and criteria as the minimum basis for evaluations of administrators and as the basis for professional development plans for administrators.

2. Mentoring and induction programs that provide support for administrators in accordance with 2007 Iowa Code Supplement section 284A.5.

3. Professional development designed to directly support best practice for leadership.

4. Evaluation of administrators against the Iowa standards for school administrators.

281—83.9(284A) Mentoring and induction program for administrators.

83.9(1) *Purpose.* A beginning administrator mentoring and induction program is created to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

83.9(2) *District participation.* Each school board shall establish an administrator mentoring program for all beginning administrators. The school board may adopt the model program developed by the department or develop the program locally. Each school board's beginning administrator mentoring and induction program shall, at a minimum, provide for one year of programming to support the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and to support beginning administrators' professional and personal needs. Each school board shall include in the program the mentor selection process, supports for beginning administrators, and the organizational and collaborative structures. Each district must also provide the budget, establish a process for sustainability of the program, and establish a process for program evaluation. The school board employing an administrator shall determine the conditions and requirements of an administrator participating in a program established pursuant to this rule. A school board shall include its plan in the school district's comprehensive school improvement plan.

83.9(3) *Recommendation for licensure.* By the end of a beginning administrator's first year of employment, the beginning administrator shall be comprehensively evaluated to determine if the administrator meets expectations to move to a professional administrator license. The school district or area education agency shall recommend the beginning administrator for a professional

administrator license to the board of educational examiners upon the administrator's completion of a successful comprehensive evaluation. The evaluation process must include documented evidence of the administrator's competence in meeting the Iowa leadership standards. A school district or area education agency may allow a beginning administrator a second year to demonstrate competence in the Iowa standards for school administrators if, after conducting a comprehensive evaluation, the school district or area education agency determines that the administrator is likely to successfully demonstrate competence in the Iowa standards for school administrators by the end of the second year. Upon notification by the school district or area education agency, the board of educational examiners shall grant a beginning administrator who has been allowed a second year to demonstrate competence a one-year extension of the beginning administrator's initial license. An administrator granted a second year to demonstrate competence shall undergo a comprehensive evaluation at the end of the second year.

281—83.10(284A) Iowa school leadership standards and criteria for administrators. The Iowa school leadership standards and criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective leadership. The standards and criteria provide school districts with a consistent basis for evaluations of administrators and serve as the basis for professional development plans for administrators. A local school board may establish additional administrator standards and related criteria, but shall at a minimum utilize the following standards, with supporting criteria listed after each, in evaluating its school leaders and adopting individual professional development plans therefor:

83.10(1) *Shared vision.* An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The administrator:

a. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs.

b. Uses research and best practice in improving the educational program.

c. Articulates and promotes high expectations for teaching and learning.

d. Aligns and implements the educational program, plans, actions, and resources with the district's vision and goals.

e. Provides leadership for major initiatives and efforts to effectuate change.

f. Communicates effectively with various stakeholders regarding progress with school improvement plan goals.

83.10(2) *Culture of learning.* An educational leader promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional development. The administrator:

a. Provides leadership for assessing, developing, and improving the climate and culture of learning.

b. Systematically and fairly recognizes and celebrates accomplishments of staff and students.

c. Provides leadership, encouragement, opportunities, and structure for staff to continually design more effective teaching and learning experiences for all students.

d. Monitors and evaluates the effectiveness of curriculum, instruction, and assessment.

e. Evaluates staff and provides ongoing coaching for improvement.

f. Ensures that staff members have professional development that directly enhances their performance and improves student learning.

g. Uses current research and theory about effective schools and leadership to develop and revise the administrator's professional growth plan.

h. Promotes collaboration with all stakeholders.

i. Is easily accessible and approachable to all stakeholders.

j. Is highly visible and engaged in the school community.

k. Articulates the desired school culture and shows evidence about how it is reinforced.

83.10(3) *Management.* An educational leader promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment. The administrator:

a. Complies with state and federal mandates and local school board policies.

b. Recruits, selects, inducts, and retains staff to support quality instruction.

c. Addresses current and potential issues in a timely manner.

d. Manages fiscal and physical resources responsibly, efficiently, and effectively.

e. Protects instructional time by designing and managing operational procedures to maximize learning.

f. Communicates effectively with both internal and external audiences about the operations of the school.

83.10(4) *Family and community.* An educational leader promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

a. Engages family and community by promoting shared responsibility for student learning and support of the educational system.

b. Promotes and supports a structure for family and community involvement in the educational system.

c. Facilitates the connections of students and families to the health and social services that support a focus on learning.

d. Collaboratively establishes a culture that welcomes and honors families and community and seeks ways to engage them in student learning.

83.10(5) *Ethics.* An educational leader promotes the success of all students by acting with integrity and fairness and in an ethical manner. The administrator:

a. Demonstrates ethical and professional behavior.

b. Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.

c. Fosters and maintains caring professional relationships with staff.

d. Demonstrates appreciation for and sensitivity to diversity in the school community.

e. Is respectful of divergent opinions.

83.10(6) *Societal context.* An educational leader promotes the success of all students by understanding the profile of the community and by responding to and influencing the larger political, social, economic, legal, and cultural context. The administrator:

a. Collaborates with service providers and other decision makers to improve teaching and learning.

b. Advocates for the welfare of all members of the learning community.

c. Designs and implements appropriate strategies to reach desired goals.

281—83.11(284A) Evaluation. The board of directors of a school district shall conduct an annual evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272 for purposes of assisting the administrator in making continuous improvements, documenting continued competence in the Iowa standards for school administrators adopted pursuant to Iowa Code section 256.7(27), and determining whether the administrator's practice meets the board's expectations for the school district. The evaluation shall include, at a minimum, an assessment of the administrator's competence in meeting the Iowa standards for school administrators and the goals of the administrator's individual professional development plan, including supporting documentation or artifacts aligned to the Iowa standards for school administrators and the individual administrator's professional development plan.

[**ARC 0524C**, IAB 12/12/12, effective 1/16/13]

281—83.12(284A) Professional development of administrators.

83.12(1) *Responsibility of district.* Each school district shall be responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school

district or area education agency. School districts may collaborate with other educational stakeholders, including other school districts, area education agencies, professional organizations, higher education institutions, and private providers, regarding the provision of professional development for school district administrators. Professional development programming for school district administrators may include support that meets the individual administrator's professional development needs as aligned to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and that meets individual administrator professional development plans.

83.12(2) *Individual plans.* In cooperation with the administrator's evaluator, an administrator who has a standard administrator's license issued by the board of educational examiners pursuant to Iowa Code chapter 272 and is employed by a school district or area education agency in a school district administrative position shall develop an individual administrator professional development plan. The purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at a minimum, on the needs of the administrator. The individual plan shall be aligned, as appropriate, to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

83.12(3) *Role of evaluator.* The administrator's evaluator shall meet annually as provided in Iowa Code section 279.23A with the administrator to review progress in meeting the goals in the administrator's individual professional development plan. The purpose of the meeting shall be to review collaborative work with other staff on student achievement goals and to modify as necessary the administrator's individual professional development plan to reflect the individual administrator's and the school district's needs and the administrator's progress in meeting the goals in the plan. The administrator shall provide evidence of progress toward meeting the goals. Modifications to the plan may be made jointly by the administrator and the administrator's supervisor, or the supervisor may adjust the plan. Any changes in the plan made unilaterally by a supervisor must be clearly documented for the administrator.

These rules are intended to implement Iowa Code chapters 284 and 284A as amended by 2007 Iowa Acts, chapter 108.

[Filed emergency 8/16/99—published 9/8/99, effective 8/20/99]
[Filed 10/21/99, Notice 9/8/99—published 11/17/99, effective 12/22/99]
[Filed 8/4/00, Notice 6/28/00—published 8/23/00, effective 9/27/00]
[Filed 8/10/01, Notice 6/27/01—published 9/5/01, effective 10/10/01]
[Filed 5/9/02, Notice 2/6/02—published 5/29/02, effective 7/3/02]
[Filed 3/14/03, Notice 2/5/03—published 4/2/03, effective 5/7/03]
[Filed 1/16/04, Notice 12/10/03—published 2/4/04, effective 3/10/04]
[Filed 2/8/08, Notice 12/19/07—published 2/27/08, effective 4/2/08]
[Filed ARC 7785B (Notice ARC 7489B, IAB 1/14/09), IAB 5/20/09, effective 6/24/09]
[Filed ARC 8808B (Notice ARC 8509B, IAB 2/10/10), IAB 6/2/10, effective 7/7/10]
[Filed ARC 9265B (Notice ARC 9015B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]
[Filed ARC 0524C (Notice ARC 0300C, IAB 8/22/12), IAB 12/12/12, effective 1/16/13]
[Filed ARC 1435C (Notice ARC 1338C, IAB 2/19/14), IAB 4/30/14, effective 6/4/14]
[Filed ARC 3631C (Notice ARC 3271C, IAB 8/30/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 98
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
GENERAL PROVISIONS

281—98.1(256,257) Definitions. For the purposes of this chapter, the following definitions apply:

"Budgetary allocation" means the portion of the funding that is specifically earmarked for a particular purpose or designated program and that, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves the modified supplemental amount for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil shall be considered transferred to the receiving school district and shall be expended for the specific purpose for which it was earmarked.

"Categorical funding" means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

"Community education" means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

Community education energizes people to strive for the achievement of determined goals and stimulates capable persons to assume leadership responsibilities. It welcomes and works with all groups, it draws no lines. It is the one institution in the entire community that has the opportunity to reach all people and groups and to gain their cooperation.

"Grants in aid" means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

"Supplement, not supplant" means that the categorical funding shall be in addition to general purpose revenues; that categorical funding shall not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues shall not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide

services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available.

"Technology" means hardware, noninstructional software and software required to provide functionality to the hardware, wireless presenters, networking and connectivity systems, computing storage, website development services, hardware carrying equipment, licensing, and technical assistance for installation of hardware, software, or software updates. Technology does not include such items as instructional software or textbook substitutes as defined in Iowa Code chapter 301, professional development, staff providing support to teachers or students, general supplies, district personnel or individuals/companies hired or contracted in lieu of district personnel, travel, printing costs or media services not listed in this definition, insurance, most purchased services, or similar district functions. Maintenance contracts do not meet the definition of "technology" unless they are actually a license renewal fee; Internet subscriptions, licenses, or fees; cable or satellite services; or very similar services.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.2(256,257) General finance. The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

98.2(1) *Indirect cost recovery.* Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency shall utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

98.2(2) *Restriction on supplanting.* Categorical funding shall supplement, but shall not supplant, expenditures in the appropriate fund into which the categorical funding is deposited and accounted for, unless the Iowa Code section authorizing the funding or allocation expressly states that supplanting is permitted from that source.

98.2(3) *Mandatory carryforward.* Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

98.2(4) *Discontinued funding.* In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency may do one of, or a combination of, the following:

a. Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 Iowa Code and 2007 Iowa Code Supplement).

b. Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

98.2(5) *Expenditures.* Expenditures from categorical funding shall be limited to direct costs of providing the program or service for which the funding was intended. Expenditures shall not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for

the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those which are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement shall not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures shall not include reimbursing the school district or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

98.2(6) *Restriction on duplication.* The school district or area education agency shall not charge the same cost to more than one funding source.

98.2(7) *Excess expenditures.* The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

98.2(8) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding shall be accounted for separately from other funding. School districts and area education agencies shall use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.3 to **98.10** Reserved.

DIVISION II
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

281—98.11(257) Categorical and noncategorical student counts. The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1)*"a"*(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), shall be expended for purposes of providing the home school assistance program.

98.12(1) *Appropriate uses of categorical funding.* Appropriate uses of the home school assistance program funding include, but are not limited to, the following:

a. Instruction for students and assistance for parents with instruction.

b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.

c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.

d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member's employment supports other programs of the school district, only that portion of the staff member's salary and benefits that is related to providing the home school assistance program can be charged to the program.

e. Staff development for the home school assistance program teacher.

f. Travel for the home school assistance program teacher.

g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.

h. A copier and computer hardware that support the home school assistance program.

i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

98.12(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or the lease or rental of space to supplement existing schoolhouse facilities for the program; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys or resources paid for with this program funding to parents or students utilizing the program. For capital expenditures for lease or rental of classrooms or facilities for this program, the cost will be expended from a capital projects fund. A reimbursement for that cost related to the program will be an interfund transfer to the capital project fund from the program funding.

98.12(3) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter); **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 0012C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.13(256C,257) Statewide voluntary four-year-old preschool program. The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for

the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

98.13(1) *Appropriate uses of categorical funding.* Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include, but are not limited to, the following:

a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.

b. Functions of student support services, including translation services.

c. Functions of staff support services, including professional development for preschool teachers.

d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.

e. Food and beverages used by enrolled students.

f. Safety equipment.

g. Playground equipment and repair costs.

h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3)*"h"* may be prorated by the school district.

i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.

j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child shall not be counted for statewide voluntary preschool program funding purposes.

98.13(2) *Pass-through funding to community-based providers.* The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per-pupil amount.

a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year, excluding the portion of such unexpended and unobligated funding that the school district authorizes to be transferred to the district's flexibility account described in rule 281—98.27(257,298A).

98.13(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition not expressly allowed by the Iowa Code, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

98.13(4) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule 281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 0518C**, IAB 12/12/12, effective 1/16/13; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 2310C**, IAB 12/9/15, effective 1/13/16; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.14(257) Supplementary weighting. Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the supplementary weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.15(257) Operational function sharing supplementary weighting. Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff, a curriculum director, or a school counselor and shall be fully expended within the five-year period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.16(257,280) Limited English proficiency (LEP) weighting. Limited English proficiency weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of limited English proficiency students above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the limited English proficiency weighting and the modified supplemental amount for limited English proficiency programs are both categorical funding and may have different restrictions than the federal limited English proficiency funding.

98.16(1) *Appropriate uses of categorical funding.* Appropriate uses of funding for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in limited English proficiency programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of limited English proficiency students and community services specific to limited English proficiency.

98.16(2) *Inappropriate uses of categorical funding.* Inappropriate uses of funding for the limited English proficiency program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the limited English proficiency program beyond the scope of the regular classroom.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.17(256B,257) Special education weighting. Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 2310C**, IAB 12/9/15, effective 1/13/16]

281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting. Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4)*"a."*

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include, but are not limited to:

a. Salary and benefits for the teacher(s) and guidance counselor(s) of identified students participating in the approved programs when the teacher or guidance counselor is dedicated to providing services directly and exclusively to the identified students beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. If the teacher or guidance counselor is part-time serving the program and part-time regular classroom teacher or guidance counselor, then the portion of time that is related to these programs may be charged to the program funding, but the portion of time that is related to the regular classroom or regular guidance counseling program shall not.

b. Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program or in an alternative school setting.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and

(4) Will remain with the K through 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

(1) The child does not require special education.

(2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

e. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

f. Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)*"a"* or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

98.18(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the formula supplementary weighting program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.18(1), administrative costs other than as allowed in subrule 98.18(1),

or any other expenditures not directly related to providing the approved program beyond the scope of the regular classroom program.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 2310C**, IAB 12/9/15, effective 1/13/16; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.19(257) Reorganization incentive weighting. Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the reorganization incentive weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.20(257) Gifted and talented program. Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district's total gifted and talented program budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students' needs beyond those provided by the regular school program pursuant to each gifted student's individualized plan. The funding shall be used only for expenditures that are directly related to providing the gifted and talented program.

98.20(1) *Appropriate uses of categorical funding.* Appropriate uses of the gifted and talented program funding include, but are not limited to:

a. Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then the portion of time that is related to the gifted and talented program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

b. Staff development for the gifted and talented teacher.

c. Resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed on the gifted students' individualized plans, and

(4) Will remain with the K through 12 gifted and talented program.

d. Student transportation exclusively for approved gifted and talented program field trips or other educational activities.

98.20(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount. A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38, 257.39, 257.40, and 257.41. This amount must account for no

more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

98.21(1) *Purpose of categorical funding.* The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4). The funding shall be used only for expenditures that are directly related to the district's approved program plan established pursuant to Iowa Code sections 257.38 through 257.41.

a. Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

b. Potential dropouts are resident pupils who are enrolled in a school district 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.

(5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the funding for an approved program include, but are not limited to:

a. Salary and benefits for instructional staff, instructional support staff, guidance counselors, and school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the approved program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person or guidance counselor works part-time with students who are participating in the approved program and has another unrelated staff assignment, only the portion of the staff person's or guidance counselor's time that is related to the program may be charged to the program funding. The school district shall have the authority to designate and submit in the program plan the portion of the staff member's or guidance counselor's time and related salary and benefits dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

b. Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through grade 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and

(4) Will remain with the K through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program located in and provided by another Iowa school district.

e. The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

f. School-level administrator assigned exclusively to an off-site alternative school or alternative program within the district. If the principal is administering the school or program part-time, the portion of time that is exclusively and directly related to the program may be charged to the program funding, but the portion of time that is related to other purposes shall not.

g. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

(1) The child does not require special education.

(2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

h. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

i. Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)*"a"* or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the modified supplemental amount program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.21(2), administrative costs other than those allowed in subrule 98.21(2), expenses related to the routine duties of a school nurse, general support for a school guidance counselor including any activities performed with identified students that are also provided to all students, or any other expenditures not directly related to providing the approved program beyond the scope of the regular classroom.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 0518C**, IAB 12/12/12, effective 1/16/13; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 2310C**, IAB 12/9/15, effective 1/13/16; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.22(257) Use of the unexpended general fund balance. The unexpended general fund balance refers to the fund balance remaining in the general fund at the end of the fiscal year.

98.22(1) *Authorization required.* The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

98.22(2) *Appropriate uses of categorical funding.* Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund shall be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

98.22(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the unexpended general fund balance include, but are not limited to, expenditures for salaries or recurring costs.

98.22(4) *Mandatory reversion of unused funding.* The portion of the unexpended general fund balance which is authorized to be transferred and expended shall increase budget authority. However, any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.23(256D,257) Iowa early intervention block grant, also known as early intervention supplement. The program's goals for kindergarten through grade 3 are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of 17 students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance.

98.23(1) *Appropriate uses of categorical funding.* Appropriate uses of the Iowa early intervention block grant funding include providing programs, instructional support, and materials at the kindergarten through grade 3 level that include but are not limited to the following:

a. Additional licensed instructional staff;

b. Additional support for students, such as before- and after-school programs, tutoring, and intensive summer programs;

c. The acquisition and administration of diagnostic reading assessments;

d. The implementation of research-based instructional intervention programs for students needing additional support;

e. The implementation of all-day, everyday kindergarten programs; and

f. The provision of intensive training programs to classroom teachers to improve reading instruction and professional development in best practices.

98.23(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the Iowa early intervention block grant program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, or administrative costs.

98.23(3) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.24(257,284) Teacher salary supplement. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

98.24(1) *Appropriate use of categorical funding.* Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10, subsection 4. Teacher salary supplement funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency

shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

98.24(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the teacher salary supplement funding include any expenditures other than the appropriate use described in subrule 98.24(1) hereof.

98.24(3) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.25(257,284) Teacher leadership supplement. The purpose of the teacher leadership supplement is to improve instruction and elevate the quality of teaching and student learning.

98.25(1) *Appropriate uses of categorical funding.* Appropriate uses of teacher leadership supplement funding shall be used only to increase the payment for a teacher assigned to a leadership role pursuant to a framework or comparable system approved pursuant to Iowa Code section 284.15; to increase the percentages of teachers assigned to leadership roles; to increase the minimum teacher starting salary to $33,500; to cover the costs for the time mentor and lead teachers are not providing instruction to students in a classroom; for coverage of a classroom when an initial or career teacher is observing or co-teaching with a teacher assigned to a leadership role; for professional development time to learn best practices associated with the career pathways leadership process; and for other costs associated with a framework or comparable system approved by the department of education under Iowa Code section 284.15 with the goals of improving instruction and elevating the quality of teaching and student learning. "Payment for a teacher" as used in this rule means additional salary for teachers and the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294. Appropriate uses also include payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4) and payment to another school district receiving an open enrolled student pursuant to Iowa Code section 282.18.

98.25(2) *Inappropriate uses of categorical funding.* Inappropriate uses of teacher leadership supplement funding shall include any expenditures other than the appropriate uses described in subrule 98.25(1).

[**ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.26(257,284) Educator quality professional development, also known as professional development supplement. The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15.

98.26(1) *Appropriate uses of categorical funding.* Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21)*"b"*(1) and 256.7(21)*"b"*(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

98.26(2) *Inappropriate uses of categorical funding.* Inappropriate uses of educator quality professional development funding include, but are not limited to, any expenditures that supplant professional development opportunities the school district otherwise makes available.

98.26(3) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

98.26(4) *Transfer to flexibility account.* All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.27(257,298A) Flexibility account. Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2, a flexibility account shall be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unauthorized funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

98.27(1) *Requirements for transfer to the flexibility account.* In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met.

a. To transfer funds from the statewide voluntary preschool program, the school district must have provided preschool programming during the fiscal year for which funding remains unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

b. To transfer funds from the home school assistance program, the school district must have funded all requests for services and materials from parents and guardians of students eligible to access the program.

98.27(2) *Requirements for use of funds deposited to the flexibility account.* Expenditures from the flexibility account shall be approved by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section 298A.2.

98.27(3) *Appropriate uses of categorical funding.* Appropriate uses of funds transferred to the flexibility account are limited to the following:

a. Start-up costs for an approved local program under the statewide voluntary preschool program.

b. Support of the approved statewide voluntary preschool program.

c. Professional development requirements under the professional development supplement.

d. Support of the home school assistance program.

e. Support of the at-risk program, alternative program or alternative school, and potential or returning dropout prevention program.

f. Support of the approved gifted and talented program.

g. Any other general fund purpose.

98.27(4) *Inappropriate uses of categorical funding.* Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2.

98.27(5) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

[**ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.28 to **98.39** Reserved.

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

281—98.40(256,257,298A) Grants in aid. The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.41 Reserved.

281—98.42(257,284) Beginning teacher mentoring and induction program. The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, as established by 2017 Iowa Acts, chapter 172, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.43(257,284A) Beginning administrator mentoring and induction program. The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

98.43(1) *Appropriate uses of categorical funding.* Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

98.43(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning administrator mentoring and induction program funding shall include any costs that are not listed in subrule 98.43(1) as appropriate uses.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.44(257,301) Nonpublic textbook services. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

98.44(1) *Appropriate uses of categorical funding.* The appropriate use of the nonpublic textbook services funding shall be for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbook" means books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, other computer courseware and magnetic media, and laptop computers or other portable personal computing devices which are used for nonreligious instructional use only.

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the school district in which the nonpublic school has relocated. Funds distributed to a former school district

for purposes of purchasing textbooks and that are unexpended shall also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

98.44(2) *Inappropriate uses of categorical funding.* Inappropriate uses of nonpublic textbook services funding include, but are not limited to, reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware other than laptop computers or other portable personal computing devices which are used for nonreligious instructional use only, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district shall not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.45(279) Early literacy. School districts shall provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, based upon an assessment or through teacher observations. The student's reading proficiency shall be reassessed by locally determined or statewide assessments. The student shall continue to be provided with intensive reading instruction, at grade levels beyond grade three if necessary, until the student is reading at grade level.

98.45(1) *Appropriate uses of categorical funding.* Appropriate uses of early literacy program funding include, but are not limited to:

a. Intensive supplemental instructional programs, instructional support, and assessment for identified students;

b. Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;

c. Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;

d. If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;

e. Intensive summer literacy programs for identified students;

f. Transportation services for identified students participating in intensive summer literacy programs;

g. The fee charged by the department for implementation of the early warning assessment for literacy provided in accordance with Iowa Code sections 256.7(31) and 279.68, effective with the budget year beginning July 1, 2017, pursuant to 2017 Iowa Acts, chapter 172.

98.45(2) *Inappropriate uses of categorical funding.* Inappropriate uses of early literacy program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.45(1), or administrative costs.

[**ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.46 to **98.59** Reserved.

DIVISION IV
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds. Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically

authorized in statute, and transfers between funds shall be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund. All moneys received by a school corporation from taxes and other sources shall be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency shall have only one general fund.

98.61(1) *Sources of revenue in the general fund.* Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks shall be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as "miscellaneous income" or related to the modified supplemental amount is restricted to the general fund.

98.61(2) *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include, but are not limited to, the following:

a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.

b. Purchasing school buses from unobligated funds on hand.

c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.

d. Employing public health nurses.

e. Funding insurance agreements if the district has not certified a district management levy.

f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.

g. Purchasing safety eye-protective devices and safety ear-protective devices.

h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.

i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.

j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.

k. Engraving and printing school bonds, in the case of a school district.

l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.

m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

n. Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation as authorized by the school budget review committee in the case of a school district.

o. Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.

p. Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.

q. Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

r. Start-up costs, other than land purchase, for the first year of a new student construction program.

s. Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).

t. Paying any other costs not required to be accounted for in another fund.

98.61(3) *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

a. Purchasing land or improvements.

b. Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

c. Modifying or remodeling school buildings or classrooms even if to make them accessible.

d. Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.

e. Funding lease-purchases.

f. Purchasing portable buildings.

g. Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.

h. Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

98.61(4) *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

a. Instructional support program. The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in paragraph *"b,"* subparagraph (2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy), and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

b. Educational improvement program. The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.62(279,296,298,670) Management fund. The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

98.62(1) *Sources of revenue in the management fund.* Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

98.62(2) *Appropriate uses of the management fund.* Appropriate expenditures in the management fund include the following:

a. Costs of unemployment benefits as provided in Iowa Code section 96.31.

b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.

c. Costs of a final court judgment entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.

d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.

e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees 55 years of age or older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.

f. Costs of a physical inventory conducted solely for the purpose of insurance.

g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.

h. Transfers to the appropriate fund for the portion of an insurance claim which was eligible under the insurance agreement but was denied because it was within the deductible limit.

i. Payment of costs of mediation and arbitration, including but not limited to legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under paragraph 98.62(2)*"c"* above.

98.62(3) *Inappropriate uses of the management fund.* Inappropriate expenditures in the management fund include the following:

a. Costs for employee health benefit plans.

b. Costs to conduct physical inventories of property for purposes other than insurance.

c. Costs to conduct actuarial studies.

d. Costs for supplies or capital outlay.

e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.

f. Any other costs not expressly authorized in the Iowa Code.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 2310C**, IAB 12/9/15, effective 1/13/16]

281—98.63(298) Library levy fund. The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the agreed-upon consideration.

98.63(1) *Sources of revenue in the library levy fund.* Sources of revenue in the library levy fund include a property tax not to exceed $0.20 per $1000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

98.63(2) *Appropriate uses of the library levy fund.* Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

98.63(3) *Inappropriate uses of the library levy fund.* Inappropriate expenditures in the library levy fund include the following:

a. Capital expenditures related to land or buildings.

b. Debt service.

c. Any other costs not necessary to provide a free public library.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund. The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed $0.33 per $1000 of assessed valuation and a voter-approved PPEL not to exceed $1.34 per $1000 of assessed valuation, for a total of $1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

98.64(1) *Sources of revenue in the PPEL fund.* Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax shall be levied for those purposes.

98.64(2) *Appropriate uses of the PPEL fund.* Appropriate expenditures in the PPEL fund include the following:

a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.

b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

e. Purchasing, leasing, or lease-purchasing equipment or technology exceeding $500 in value per purchase, lease, or lease-purchase transaction.

(1) "Equipment" means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2)*"n"* or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2)*"h."*

(2) "Transaction" means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding $500 per transaction.

f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

g. Procuring or acquisition of library facilities.

h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. "Repairing" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. "Reconstructing" means rebuilding or restoring as an entity a thing which was lost or destroyed. "Maintenance" means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting

for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

i. Energy conservation projects.

j. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.

k. The rental of facilities under Iowa Code chapter 28E.

l. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds $2,500. "Repairing," for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds $2,500.

m. Purchase of buildings or lease-purchase option agreements for school buildings.

n. Purchase of equipment for recreational purposes.

o. Payments to a municipality or other entity as required under Iowa Code section 403.19, subsection 2.

p. Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.

q. Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.

r. Purchase of land as part of start-up costs for a new student construction program or if the sale proceeds of the previous student construction were insufficient to purchase land, but not for materials and supplies for a facility intended to be sold.

s. Construction materials and supplies for a student-constructed building or shed intended to be retained by and used by the district.

t. Demolition of a district-owned building.

u. Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

98.64(3) *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

a. Student construction materials and supplies for a facility intended to be sold.

b. Salaries and benefits.

c. Travel.

d. Supplies.

e. Facility, vehicle, or equipment maintenance.

f. Printing costs or media services.

g. Any other purpose not expressly authorized in the Iowa Code.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 0012C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); **ARC 1967C**, IAB 4/15/15, effective 5/20/15; **ARC 2310C**, IAB 12/9/15, effective 1/13/16]

281—98.65(276,300) Public educational and recreational levy (PERL) fund. Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program shall be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. The

authority to establish a levy for a PERL fund is available to school districts but not to area education agencies.

98.65(1) *Sources of revenue in the PERL fund.* Sources of revenue in the PERL fund include a property tax levy not to exceed $0.135 per $1000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

98.65(2) *Appropriate uses of the PERL fund.* Appropriate expenditures in the PERL fund include the following:

a. Establishing and maintaining free public recreation places and playgrounds, including necessary accommodations.

b. Providing free public educational and recreational activities.

c. Establishing and supervising a free community education program.

d. Providing a community education director if a community education program is established.

98.65(3) *Inappropriate uses of the PERL fund.* Inappropriate expenditures in the PERL fund include the following:

a. Programs for which a fee may be charged such as before- and after-school programs and preschool programs.

b. Any other costs not necessary to provide free programs for community education and for public recreation places, playgrounds, and programs.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency shall not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

98.66(1) *Sources of revenue in the district support trust fund.* Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

98.66(2) *Appropriate uses of the district support trust fund.* Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.66(3) *Inappropriate uses of the district support trust fund.* Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure which is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.67(257,279,298A,565) Permanent funds. Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency shall not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of

and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

98.67(1) *Sources of revenue in the permanent funds.* Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

98.67(2) *Appropriate uses of the permanent funds.* Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.67(3) *Inappropriate uses of the permanent funds.* Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any expenditure which is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.68(76,274,296,298,298A) Debt service fund. A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency shall have only one debt service fund.

98.68(1) *Sources of revenue in the debt service fund.* Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

98.68(2) *Appropriate uses of the debt service fund.* Appropriate expenditures in the debt service fund include the following:

a. Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors shall consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.

b. Payment of costs of registration of public bonds or obligations.

c. Payment of additional amounts as the board deems necessary to apply on the principal.

d. Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.

e. Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code subsection 278.1(1)*"e."*

98.68(3) *Inappropriate uses of the debt service fund.* Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.69(76,273,298,298A,423E,423F) Capital projects fund. Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the previous local option sales and services tax for school infrastructure and the current state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

98.69(1) *Sources of revenue in the capital projects fund.* Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds which authorized indebtedness for capital facility projects or which initiated a capital facility project or which received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code subsection 273.3(7).

98.69(2) *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code subsection 278.1(1)*"e."*

(4) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists; otherwise, appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code subsection 278.1(1)*"e."*

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code subsection 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

(7) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

98.69(3) *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state/local options sales and services tax supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than

100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

98.70(1) *Sources of revenue in the student activity fund.* Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys, and amounts transferred from the general fund under Iowa Code section 298A.2 as described in paragraph 98.61(2)*"s."*

98.70(2) *Appropriate uses of the student activity fund.* Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

98.70(3) *Inappropriate uses of the student activity fund.* Inappropriate expenditures in the student activity fund include the following:

a. Maintenance of funds raised by outside organizations.

b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.

c. Expenditures that lack public purpose.

d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.

e. Transfers to any other fund of any surplus within the fund.

f. Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.

g. Use of the student activity fund as a clearing account for any other fund.

h. Cash payments to student members of activity groups.

i. The cost of optional equipment or customizing uniforms.

j. The cost of uniforms when the following two tests are not met:

(1) The activity is a part of the school's educational program, and

(2) The wearing of the uniform or equipment is necessary in order to participate.

k. Hospital or medical claims for student injuries or procurement of student medical insurance.

l. Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.

m. Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.

n. Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 3632C**, IAB 2/14/18, effective 3/21/18]

281—98.71(298A) Entrepreneurial education fund. The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

98.71(1) *Sources of revenue in the entrepreneurial education fund.* Sources of revenue in the entrepreneurial education fund shall consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation shall transfer moneys in a student activity fund established under Iowa Code section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation shall not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

98.71(2) *Appropriate uses of the entrepreneurial education fund.* Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes which include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

98.71(3) *Inappropriate uses of the entrepreneurial education fund.* A student organization or club shall not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

98.71(4) *Fund closure.* An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund shall be deposited in the school district's student activity fund.

[**ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.72(256B,257,298A) Special education instruction fund. The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 274.9(3) which are accounted for in the general fund.

98.72(1) *Sources of revenue in the special education instruction fund.* Sources of revenue in the special education instruction fund include sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

98.72(2) *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

98.72(3) *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code subsection 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.73(282,298A) Juvenile home program instruction fund. The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA shall compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

98.73(1) *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

98.73(2) *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes and include:

a. Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

b. Professional development which is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

c. Research-based resources, materials, software, supplies, and equipment, and purchased services that are customarily considered instructional and that meet all of the following criteria:

(1) Meet the needs of school-age students placed in juvenile homes,

(2) Will remain with the AEA juvenile home program, and

(3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

d. Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or required pursuant to Iowa Code section 279.68.

e. Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

f. Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student

placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then the portion of time that is exclusively and directly related to the juvenile home instructional programs may be charged to the program, but the portion of time that is related to other purposes shall not. The total administrative cost shall not exceed 10 percent of the total of all allowable costs for the juvenile home program.

g. When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2)*"f"* and the total of rent and associated operation and maintenance shall not exceed 20 percent of the total of all allowable costs for the juvenile home program.

h. Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

98.73(3) *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

b. Costs that are not ordinary and necessary to provide instruction.

c. Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

d. Costs that were or could have been filed with Medicaid for reimbursement.

e. Debt service.

f. Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.

g. Support services that are AEA responsibilities pursuant to the Iowa Code.

h. Rental when adequate space is available at the AEA or at the district of location or when the students require treatment provided by the juvenile home or are required to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.

i. Costs of an audit.

j. Indirect costs.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.74(283A,298A) School nutrition fund. All school districts shall operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

98.74(1) *Sources of revenue in the school nutrition fund.* Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

98.74(2) *Appropriate uses of the school nutrition fund.* Appropriate expenditures in the school nutrition fund include the following:

a. Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

b. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

98.74(3) *Inappropriate uses of the school nutrition fund.* Inappropriate expenditures in the school nutrition fund include the following:

a. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

b. Operating transfers to any other fund.

c. Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

d. Costs estimated or allocated that are expenditures of the district.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.75(279,298A) Child care and before- and after-school programs fund. The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

98.75(1) *Sources of revenue in the child care fund.* Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

98.75(2) *Appropriate uses of the child care fund.* Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

98.75(3) *Inappropriate uses of the child care fund.* Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.76(298A) Regular education preschool fund. The board of directors of a school district may establish a preschool for students who are not of school age.

98.76(1) *Sources of revenue in the regular education preschool fund.* Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C shall not be accounted for in the regular education preschool fund.

98.76(2) *Appropriate uses of the regular education preschool fund.* Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

98.76(3) *Inappropriate uses of the regular education preschool fund.* Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.77(298A) Student construction fund. If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.78(298A) Other enterprise funds. Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.74(283A,298A) through 281—98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 1967C**, IAB 4/15/15, effective 5/20/15]

281—98.79 to **98.81** Reserved.

281—98.82(298A) Internal service funds. Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in an enterprise fund rather than an internal service fund. Internal service funds include, but are not limited to, self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.83 to **98.91** Reserved.

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district shall use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency shall not transfer its own resources to a private purpose trust fund.

98.92(1) *Sources of revenue in private purpose trust funds.* Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

98.92(2) *Appropriate uses of private purpose trust funds.* Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

98.92(3) *Inappropriate uses of private purpose trust funds.* Inappropriate expenditures in the private purpose trust fund include any expenditure which is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.93(298A) Other trust funds. Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.94 to **98.100** Reserved.

281—98.101(298A) Agency funds. Agency funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Agency funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization which has its own federal identification number (FIN). In an agency fund, the school district or area education agency merely renders a service as a custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Agency funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

98.101(1) *Sources of receipts in agency funds.* Sources of receipts in the agency funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

98.101(2) *Appropriate uses of agency funds.* Appropriate disbursements from an agency fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

98.101(3) *Inappropriate uses of agency funds.* Inappropriate disbursements from agency funds include any disbursement which is not consistent with the terms of the agreement, not legal to a school district, or that exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.102 to **98.110** Reserved.

281—98.111(24,29C,257,298A) Emergency levy fund. A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code subsection 29C.2(1).

98.111(1) *Sources of revenue in the emergency levy fund.* Sources of revenue for the emergency levy fund include a tax levy not to exceed $0.27 per $1000 of assessed value of taxable property, and interest on those moneys.

98.111(2) *Appropriate uses of emergency levy fund.* Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

98.111(3) *Inappropriate uses of emergency levy fund.* Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.112(275) Equalization levy fund. If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district shall transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

98.112(1) *Sources of revenue for the equalization levy fund.* Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

98.112(2) *Appropriate uses of the equalization levy fund.* Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

98.112(3) *Inappropriate uses of the equalization levy fund.* Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298A, 300, 301, 423E, 423F, 565, and 670, Iowa Code sections 11.6(1)*"a"*(1), 256C.4(1)*"c,"* 256D.4(3) and 284.13, and 2011 Iowa Code Supplement chapters 298 and 299A.

[Filed ARC 8054B (Notice ARC 7781B, IAB 5/20/09), IAB 8/26/09, effective 9/30/09][1]
[Editorial change: IAC Supplement 9/23/09]
[Editorial change: IAC Supplement 12/30/09]
[Filed ARC 9267B (Notice ARC 9017B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]
[Filed ARC 0012C (Notice ARC 9793B, IAB 10/5/11), IAB 2/22/12, effective 3/28/12][2]
[Editorial change: IAC Supplement 3/21/12]
[Filed ARC 0518C (Notice ARC 0387C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]
[Filed ARC 1967C (Notice ARC 1881C, IAB 2/18/15), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2310C (Notice ARC 2184C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]
[Filed ARC 3632C (Notice ARC 3270C, IAB 8/30/17), IAB 2/14/18, effective 3/21/18]

[1] September 30, 2009, effective date of 281—98.12(257,299A) and 281—98.112(275) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009. At its meeting held December 8, 2009, the Committee voted to delay the effective date of 281—98.12(257,299A) until the adjournment of the 2010 Session of the General Assembly.

[2] March 28, 2012, effective date of 98.12 and 98.64(2)*"e," "h"* delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

EDUCATIONAL EXAMINERS BOARD[282]

[Prior to 6/15/88, see Professional Teaching Practices Commission[640]]
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CHAPTER 13
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[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

282—13.1(272) All applicants desiring Iowa licensure.

13.1(1) *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(2) *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 13.1(1)*"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]

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 applicants who fulfill the general requirements set out in subrule 13.5(1) and the specific requirements set out for each license.

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

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

b. Have completed a state-approved teacher education program.

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. Definitions.

"Nontraditional" means any method of teacher preparation that falls outside the traditional method of preparing teachers, that provides at least a one- or two-year sequenced program of instruction taught at regionally accredited and state-approved colleges or universities, that includes commonly recognized pedagogy classes being taught for course credit, and that requires a student teaching component.

"Proficiency," for the purposes of paragraph 13.5(2)*"e,"* means that an applicant has passed all parts of the standard.

"Recognized non-Iowa teacher preparation institution" means an institution that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

b. In addition to the requirements set forth in subrule 13.5(1), applicants from non-Iowa institutions:

(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.

(2) Shall provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education if the teacher preparation program was completed on or after January 1, 2013, and the applicant has verified fewer than three years of valid out-of-state teaching experience. If the teacher preparation program was completed prior to January 1, 2013, or if the applicant has verified three years of valid out-of-state teaching experience, the applicant must provide verification of successfully passing the mandated assessment(s) in the state in which the applicant is currently licensed (or verify highly qualified status) or must provide verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education.

(3) Shall provide an official institutional transcript(s) to be analyzed for the requirements necessary for Iowa licensure. An applicant must have completed at least 75 percent of the coursework as outlined in 281—subrules 79.15(2) to 79.15(5) and an endorsement requirement through a two- or four-year institution in order for the endorsement to be included on the license. An applicant who has not completed at least 75 percent of the coursework for at least one of the basic Iowa teaching endorsements completed will not be issued a license. 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 licensure.

(4) Shall demonstrate recency of experience by providing verification of either one year of teaching experience or six semester hours of college credit during the five-year period immediately preceding the date of application.

(5) Shall not be subject to any pending disciplinary proceedings in any state or country.

(6) Shall comply with all requirements with regard to application processes and payment of licensure fees.

c. If through a transcript analysis, the teacher preparation coursework as outlined in 281—subrules 79.15(2) to 79.15(5) or one of the basic teaching endorsement requirements for Iowa is not met, the applicant may be eligible for the equivalent Iowa endorsement areas, as designated by the Iowa board of educational examiners, based on current and valid National Board Certification.

d. If the teacher preparation program was considered nontraditional, candidates will be asked to verify the following:

(1) That the program was for secondary education;

(2) A cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution; and

(3) The completion of a student teaching or internship experience or three years of teaching experience.

e. If the teacher preparation coursework as outlined in 281—subrules 79.15(2) to 79.15(5) cannot be reviewed through a traditional transcript evaluation, a portfolio review and evaluation process may be utilized.

(1) An applicant must demonstrate proficiency in a minimum of at least 75 percent of the teacher preparation coursework as outlined in 281—subrules 79.15(2) to 79.15(5).

(2) An applicant must meet with the board of educational examiners to answer any of the board's questions concerning the portfolio.

13.5(3) *Applicants from foreign institutions.* An applicant for initial licensure whose preparation was completed in a foreign institution must obtain a course-by-course credential evaluation report completed by one of the board-approved credential evaluation services and then file this report with the 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.

[**ARC 2016C**, IAB 6/10/15, effective 7/15/15; **ARC 2584C**, IAB 6/22/16, effective 7/27/16]

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

[**ARC 2016C**, IAB 6/10/15, effective 7/15/15]

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 from a regionally accredited college or university in a recognized endorsement area, or
- Master's degree from a regionally accredited college or university 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]

282—13.9(272) Teacher intern license.

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

13.9(2) *Term.* The term of the teacher intern license will be one school year. This license is nonrenewable.

13.9(3) *Teacher intern requirements.* A teacher intern license 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]

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 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. 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]

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. 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:

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

[**ARC 1328C**, IAB 2/19/14, effective 3/26/14]

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 provides verification of successfully passing the Iowa-mandated assessment(s) by meeting the minimum score set by the Iowa department of education if the teacher preparation program was completed on or after January 1, 2013, and who:

a. Has completed a traditional teacher preparation program and been the holder of, or presently holds, or is eligible to hold, a license in Iowa; or

b. Holds a valid or expired teaching certificate based on a nontraditional teacher preparation program, is able to verify three years of teaching experience, and provides passing scores on tests mandated by the state that issued the certificate. The license issued will contain a disclaimer stating that the holder of this license may not be eligible for full Iowa teaching licensure.

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, 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]

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

13.17(1) *Teacher exchange license.*

a. For an applicant applying under 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. Any coursework deficiencies must be completed for college credit through a regionally accredited institution, 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.

(3) The applicant has not met the requirement for recency set forth in 13.5(2)*"b"*(4).

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

13.17(2) *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 traditional teacher preparation program at a regionally accredited and state-approved two- or four-year college.

(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.

f. Fees. Fees for the background check, evaluation and license issued pursuant to 13.17(3) will be limited to the fee outlined in rule 282—12.1(272) for the issuance of a license.

[**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]

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

13.28(8) *Health.* K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, 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 either the K-8 mathematics or middle school mathematics 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.

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.

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 community.

(3) Linguistic structure of American Sign Language.

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

(5) Teaching the culture of deaf people.

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

c. Other. Be the holder of or be eligible for one other teaching endorsement.

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.* The applicant must have met the requirements for the standard license and a teaching endorsement.

a. *Authorization.* The holder of this endorsement is authorized to serve as a content specialist in kindergarten and grades one through twelve in the specific content listed on the authorization.

b. *Requirements.*

(1) Hold a master's degree in the content area or complete 30 semester hours of college course work in the content area.

(2) Complete 15 semester hours of credit in professional development in three or more of the following areas:

1. Using research-based content teaching strategies;
2. Integrating appropriate technology into the learning experiences for the specific content;
3. Engaging the learner in the content through knowledge of learner needs and interests;
4. Using reflective thinking to solve problems in the content area;
5. Making data-driven decisions in the content area;
6. Utilizing project-based learning in the content area;
7. Developing critical thinking skills in the content area;
8. Forming partnerships to collaborate with content experts within the community;
9. Relating content with other content areas;
10. Facilitating content learning in large and small teams;
11. Implementing response to intervention (RTI) to close achievement gaps in the content area.

(3) Complete an internship, externship, or professional experience for a minimum of 90 contact hours in the content area.

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 from a regionally accredited institution. The master's degree must be 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) One thousand 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.

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.

[**ARC 7986B**, IAB 7/29/09, effective 9/2/09; **ARC 8248B**, IAB 11/4/09, effective 10/12/09; **ARC 8403B**, IAB 12/16/09, effective 1/20/10; **ARC 9070B**, IAB 9/8/10, effective 10/13/10; **ARC 9071B**, IAB 9/8/10, effective 10/13/10; **ARC 9210B**, IAB 11/3/10, effective 12/8/10; **ARC 9211B**, IAB 11/3/10, effective 12/8/10; **ARC 9212B**, IAB 11/3/10, effective 12/8/10; **ARC 9838B**, IAB 11/2/11, effective 12/7/11; **ARC 9839B**, IAB 11/2/11, effective 12/7/11; **ARC 0448C**, IAB 11/14/12, effective 12/19/12; **ARC 0449C**, IAB 11/14/12, effective 12/19/12; **ARC 0866C**, IAB 7/24/13, effective 8/28/13; **ARC 0875C**, IAB 7/24/13, effective 8/28/13; **ARC 0986C**, IAB 9/4/13, effective 10/9/13; **ARC 1085C**, IAB 10/16/13, effective 11/20/13; **ARC 1171C**, IAB 11/13/13, effective 12/18/13; **ARC 1328C**, IAB 2/19/14, effective 3/26/14; **ARC 1327C**, IAB 2/19/14, effective 3/26/14; **ARC 2015C**, IAB 6/10/15, effective 7/15/15; **ARC 2016C**, IAB 6/10/15, effective 7/15/15; **ARC 2397C**, IAB 2/17/16, effective 3/23/16; **ARC 2586C**, 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 3197C**, IAB 7/5/17, effective 8/9/17; **ARC 3634C**, IAB 2/14/18, effective 3/21/18]

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 dates, corrections, duplicates, and fraud.

13.30(1) *Issue date on original license.* A license is valid only from and after the date of issuance.

13.30(2) *Correcting licenses.* If a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board's mailing of a license, a corrected license shall be issued without charge to the licensee. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.

13.30(3) *Duplicate licenses.* Upon application and payment of the fee set out in 282—Chapter 12, a duplicate license shall be issued.

13.30(4) *Fraud in procurement or renewal of licenses.* Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

These rules are intended to implement Iowa Code chapter 272 and 2014 Iowa Acts, chapter 1116, division VI.

Filed 12/23/08, Notice 10/8/08—published 1/14/09, effective 2/18/09]
[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]
[Filed ARC 7869B (Notice ARC 7600B, IAB 2/25/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 7987B (Notice ARC 7751B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7986B (Notice ARC 7744B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 8133B (Notice ARC 7778B, IAB 5/20/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8134B (Notice ARC 7860B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8138B (Notice ARC 7871B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8139B (Notice ARC 7872B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed Emergency ARC 8248B, IAB 11/4/09, effective 10/12/09]
[Filed ARC 8400B (Notice ARC 8125B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]
[Filed ARC 8401B (Notice ARC 8121B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 8402B (Notice ARC 8126B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]
[Filed ARC 8403B (Notice ARC 8129B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]
[Filed ARC 8604B (Notice ARC 8250B, IAB 11/4/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8610B (Notice ARC 8249B, IAB 11/4/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8607B (Notice ARC 8408B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8688B (Notice ARC 8436B, IAB 1/13/10), IAB 4/7/10, effective 5/12/10]
[Filed ARC 8957B (Notice ARC 8686B, IAB 4/7/10), IAB 7/28/10, effective 9/1/10]
[Filed ARC 9072B (Notice ARC 8822B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9070B (Notice ARC 8824B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9071B (Notice ARC 8825B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9207B (Notice ARC 8969B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9205B (Notice ARC 8961B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9206B (Notice ARC 8968B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9210B (Notice ARC 8965B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9211B (Notice ARC 8966B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9212B (Notice ARC 8967B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9573B (Notice ARC 9382B, IAB 2/23/11), IAB 6/29/11, effective 8/3/11]
[Filed ARC 9838B (Notice ARC 9663B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9839B (Notice ARC 9662B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9840B (Notice ARC 9661B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9925B (Notice ARC 9744B, IAB 9/7/11), IAB 12/14/11, effective 1/18/12]
[Filed ARC 0026C (Notice ARC 9924B, IAB 12/14/11), IAB 3/7/12, effective 4/11/12]
[Filed ARC 0446C (Notice ARC 0236C, IAB 7/25/12), IAB 11/14/12, effective 12/19/12]
[Filed ARC 0448C (Notice ARC 0235C, IAB 7/25/12), IAB 11/14/12, effective 12/19/12]
[Filed ARC 0449C (Notice ARC 0312C, IAB 9/5/12), IAB 11/14/12, effective 12/19/12]
[Filed Emergency After Notice ARC 0563C, IAB 1/23/13, effective 1/1/13]
[Filed ARC 0605C (Notice ARC 0509C, IAB 12/12/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 0698C (Notice ARC 0614C, IAB 2/20/13), IAB 5/1/13, effective 6/5/13]
[Filed ARC 0865C (Notice ARC 0676C, IAB 4/3/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0866C (Notice ARC 0696C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0867C (Notice ARC 0706C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0868C (Notice ARC 0705C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0875C (Notice ARC 0700C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0986C (Notice ARC 0762C, IAB 5/29/13), IAB 9/4/13, effective 10/9/13]
[Filed ARC 1085C (Notice ARC 0879C, IAB 7/24/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1166C (Notice ARC 0880C, IAB 7/24/13), IAB 11/13/13, effective 12/18/13]
[Filed ARC 1168C (Notice ARC 0987C, IAB 9/4/13), IAB 11/13/13, effective 12/18/13]
[Filed ARC 1171C (Notice ARC 0993C, IAB 9/4/13), IAB 11/13/13, effective 12/18/13]
[Filed ARC 1324C (Notice ARC 1182C, IAB 11/13/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1323C (Notice ARC 1181C, IAB 11/13/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1328C (Notice ARC 1236C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1327C (Notice ARC 1235C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1374C (Notice ARC 1272C, IAB 1/8/14), IAB 3/19/14, effective 4/23/14]
[Filed ARC 1454C (Notice ARC 1343C, IAB 2/19/14), IAB 5/14/14, effective 6/18/14]
[Filed ARC 1878C (Notice ARC 1723C, IAB 11/12/14), IAB 2/18/15, effective 3/25/15]
[Filed ARC 2015C (Notice ARC 1917C, IAB 3/18/15), IAB 6/10/15, effective 7/15/15]
[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 2527C (Notice ARC 2412C, IAB 2/17/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 2584C (Notice ARC 2453C, IAB 3/16/16), IAB 6/22/16, effective 7/27/16]
[Filed ARC 2586C (Notice ARC 2450C, IAB 3/16/16), IAB 6/22/16, effective 7/27/16]

[Filed ARC 2792C (Notice ARC 2689C, IAB 8/31/16), IAB 11/9/16, effective 12/14/16]
[Filed ARC 2793C (Notice ARC 2690C, IAB 8/31/16), IAB 11/9/16, effective 12/14/16][1]
[Filed ARC 3196C (Notice ARC 3012C, IAB 4/12/17), IAB 7/5/17, effective 8/9/17]
[Filed ARC 3197C (Notice ARC 3047C, IAB 5/10/17), IAB 7/5/17, effective 8/9/17]
[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]
[Filed ARC 3634C (Notice ARC 3470C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

[1] December 14, 2016, effective date of 13.28(29)*"b"*(6) [ARC 2793C, Item 1] delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held December 13, 2016.

CHAPTER 15
SPECIAL EDUCATION SUPPORT PERSONNEL AUTHORIZATIONS

282—15.1(272) Authorizations requiring a license.

15.1(1) The following licenses are based on teaching endorsements.

a. Special education consultant.

b. Supervisor of special education—instructional.

c. Work experience coordinator.

15.1(2) The orientation and mobility specialist license is based on school-centered preparation, but the sequence of coursework does not permit service as a teacher.

[**ARC 3633C**, IAB 2/14/18, effective 3/21/18]

282—15.2(272) Special education consultant.

15.2(1) *Authorization.* The holder of this endorsement is authorized to serve as a special education consultant. The consultant provides ongoing assistance to instructional programs for pupils requiring special education. A consultant can serve programs with pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8) with the exception of consultants serving deaf or hard-of-hearing or visually disabled students. Applicants who desire to serve as consultants serving deaf or hard-of-hearing or visually disabled students must hold the respective special education instructional endorsement. The deaf or hard-of-hearing consultant endorsement or the visually disabled consultant endorsement allows the individual to serve students from birth to age 21.

15.2(2) *Program requirements.*

a. An applicant must hold a master's degree.

(1) Option 1: Master's in special education.

(2) Option 2: Master's in another area of education plus an endorsement in at least one special education instructional area under rule 282—14.2(272).

b. Content. The coursework is to be at least 8 graduate semester hours to include the following:

(1) Curriculum development design.

(2) Consultation process in special or regular education:

1. Examination, analysis, and application of a methodological model for consulting with teachers and other adults involved in the educational program.

2. Interpersonal relations, interaction patterns, interpersonal influence, and communication skills.

(3) Skills required for conducting a needs assessment, delivering staff in-service needs, and evaluating in-service sessions.

15.2(3) *Other.* An applicant must have four years of successful teaching experience, two of which must be in special education.

282—15.3(272) Itinerant hospital services or home services teacher. Rescinded **ARC 3633C**, IAB 2/14/18, effective 3/21/18.

282—15.4(272) Special education media specialist. Rescinded **ARC 3633C**, IAB 2/14/18, effective 3/21/18.

282—15.5(272) Supervisor of special education—instructional.

15.5(1) *Authorization.* The holder of this endorsement is authorized to serve as a supervisor of special education instructional programs. Two endorsements are available within this category:

a. The early childhood—special education supervisor endorsement allows the individual to provide services to programs with pupils below the age of 7.

b. The supervisor of special education—instructional endorsement (K-12) allows the individual to provide services to programs with pupils from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

15.5(2) *Program requirements.*

a. An applicant must hold a master's degree.

(1) Option 1: Master's in special education.

(2) Option 2: Master's in another area of education plus 30 graduate semester hours in special education (instructional). These hours may have been part of, or in addition to, the degree requirements.

b. An applicant must meet the requirements for or hold the consultant endorsement.

c. Content. The program shall include a minimum of 16 graduate semester hours to specifically include the following:

(1) Coursework requirements specified for special education consultant. Refer to rule 282—15.2(272).

(2) Current issues in special education administration including school law/special education law.

(3) School personnel administration.

(4) Program evaluation.

(5) Educational leadership.

(6) Administration and supervision of special education.

(7) Practicum: special education administration. NOTE: This requirement may be waived based on two years of experience as a special education administrator.

(8) Evaluator approval component.

15.5(3) *Other.*

a. An applicant must have two years of consultant/supervisor/coordinator/head teacher or equivalent experience in special education.

b. The supervisor for early childhood—special education would need to meet the requirements for that endorsement. The K-12 supervisor would need to meet the requirements for one special education teaching endorsement to include instructional grade levels K-8 and 5-12.

[**ARC 9073B**, IAB 9/8/10, effective 10/13/10]

282—15.6(272) Work experience coordinator.

15.6(1) *Authorization.* The holder of this endorsement is authorized to provide support service as a work experience coordinator to secondary school programs, grades 5-12 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

15.6(2) *Program requirements.*

a. An applicant must hold a baccalaureate degree.

b. Content. The coursework must include:

(1) A course in career-vocational programming for special education students (if not included in the program for 5-12 endorsement).

(2) A course in coordination of cooperative occupational education programs.

(3) A course in career-vocational assessment and guidance for those with disabilities.

15.6(3) *Other.* An applicant must hold a special education endorsement—grades 5-12.

[**ARC 3633C**, IAB 2/14/18, effective 3/21/18]

282—15.7(272) Other special education practitioner endorsements.

15.7(1) *School psychologist.* Rescinded IAB 7/29/09, effective 9/2/09.

15.7(2) *School psychologist one-year Class A license.* Rescinded IAB 7/29/09, effective 9/2/09.

15.7(3) *Speech-language pathologist.* Rescinded IAB 7/29/09, effective 9/2/09.

15.7(4) *School audiologist.* Rescinded IAB 7/29/09, effective 9/2/09.

15.7(5) *School social worker.* Rescinded IAB 7/29/09, effective 9/2/09.

15.7(6) *Orientation and mobility specialist.*

a. *Authorization.* The holder of this license is authorized to teach pupils with a visual impairment (see Iowa Code section 256B.2), including those pupils who are deaf-blind.

b. *Provisional orientation and mobility license.* The provisional license is valid for three years. An applicant must:

(1) Hold a baccalaureate or master's degree from an approved state and regionally accredited program in orientation and mobility or equivalent coursework.

(2) Have completed an approved human relations component.

(3) 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.

(4) 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.

(5) Have completed at least 350 hours of fieldwork and training under the supervision of the university program.

(6) Have completed the background check requirements set forth in rule 282—13.1(272).

c. *Standard orientation and mobility license.* An applicant must:

(1) Complete the requirements set forth in paragraph 15.7(6)*"b."*

(2) Verify successful completion of a three-year probationary period.

d. *Renewal of orientation and mobility license.* An applicant must:

(1) Complete six units earned in any combination listed below.

1. One unit may be earned for each semester hour of graduate credit, completed through a regionally accredited institution, which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

2. One unit may be earned for each semester hour of graduate or undergraduate credit, completed through a regionally accredited institution, which may not lead to a degree but which adds greater depth and breadth to present endorsements held.

3. One unit may be earned for each semester hour of credit, completed through a regionally accredited institution, which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

4. One unit may be earned upon completion of each licensure renewal course or activity approved through guidelines established by the board of educational examiners.

(2) Submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

1. A person is engaged in active duty in the military service of this state or of the United States.

2. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

3. A person is practicing a licensed profession outside this state.

4. A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

e. *Exception.* An orientation and mobility specialist is not eligible for any administrator license in either general education or special education.

[**ARC 7986B**, IAB 7/29/09, effective 9/2/09; **ARC 0026C**, IAB 3/7/12, effective 4/11/12; **ARC 2230C**, IAB 11/11/15, effective 12/16/15]

282—15.8(272) Supervisor of special education—support. Rescinded IAB 7/29/09, effective 9/2/09.

These rules are intended to implement Iowa Code chapter 272.

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]
[Filed ARC 7986B (Notice ARC 7744B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 9073B (Notice ARC 8828B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 0026C (Notice ARC 9924B, IAB 12/14/11), IAB 3/7/12, effective 4/11/12]

[Filed ARC 2230C (Notice ARC 2130C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]
[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 16
STATEMENTS OF PROFESSIONAL RECOGNITION (SPR)

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

282—16.1(272) Statement of professional recognition (SPR).

16.1(1) The following are authorizations that require or permit statements of professional recognition and licenses obtained from the professional licensure division, department of public health, or the board of nursing and that do not permit service as a teacher:

a. School audiologist.

b. School nurse.

c. School occupational therapist.

d. School physical therapist.

e. School social worker.

f. Special education nurse.

g. Speech-language pathologist.

16.1(2) Application. Statements of professional recognition 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).

[**ARC 2230C**, IAB 11/11/15, effective 12/16/15; **ARC 3633C**, IAB 2/14/18, effective 3/21/18]

282—16.2(272) School audiologist. If an applicant has completed a master's degree in audiology but has not completed the education sequence or chooses not to be certified, the applicant must obtain a license from the Iowa board of speech pathology and audiology, department of public health. Additionally, the person is required to obtain an SPR from the board of educational examiners.

16.2(1) *Authorization.* The holder of this statement of professional recognition is authorized to serve as a school audiologist to pupils from birth to age 21 who have hearing impairments (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

16.2(2) *Requirements.* The special education director (or designee) of the area education agency must submit a letter requesting that the authorization be issued. The following documents must be included:

a. A copy of a temporary or regular license issued from the professional licensure division, department of public health.

b. An official transcript reflecting a master's degree in audiology.

16.2(3) *Validity.* The SPR shall be valid for five years.

16.2(4) *Temporary authorization.* A temporary SPR will be issued for one school year. An approved human relations course must be completed before the start of the next school year. The applicant must provide evidence that:

a. The applicant has completed the human relations component within the required time frame; and

b. The class of license from the professional licensure division is a regular license in the event a temporary license was issued initially.

[**ARC 3633C**, IAB 2/14/18, effective 3/21/18]

282—16.3(272) School nurse. A person who has passed the registered nurse examination and is licensed by the Iowa board of nursing may obtain a statement of professional recognition (SPR) from the board of educational examiners.

16.3(1) *Authorization.* The holder of an SPR is authorized to promote the health and safety of the students in an accredited school district, including providing medical treatment as allowed under the authority granted by virtue of holding a license from the Iowa board of nursing.

16.3(2) *Requirements.*

a. Applicant has passed the registered nurse examination, is licensed by the Iowa board of nursing and has a baccalaureate degree.

b. While employed by an accredited K-12 school district, applicant maintains licensure with the Iowa board of nursing.

16.3(3) *Validity.* The school nurse SPR shall be valid for five years.

16.3(4) *Local requirements.* A school district may require an SPR, but the board of educational examiners does not require an SPR for nurses working in a school district.

16.3(5) *Renewal.* Renewal requirements for the SPR:

a. Applicant must apply for renewal every five years.

b. Applicant must maintain continual licensure with the Iowa board of nursing.

c. Applicant must complete continuing education as required by the Iowa board of nursing.

282—16.4(272) School occupational therapist. A person who holds a degree or equivalent baccalaureate in occupational therapy and a valid license to practice occupational therapy in Iowa as granted by the professional licensure division, department of public health, may obtain a statement of professional recognition (SPR) by the board of educational examiners.

16.4(1) *Authorization.* The holder of this authorization may serve as a school occupational therapist to pupils from birth to age 21 who have physical impairments (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The legalization for this support personnel is through a statement of professional recognition (SPR) and not through teacher licensure.

16.4(2) *Requirements.*

a. The special education director (or designee) of the area education agency must submit a letter to the board of educational examiners to request that the authorization be issued.

b. An applicant must also submit the following documents:

(1) A copy of a temporary or regular license from the professional licensure division, department of public health.

(2) An official transcript.

16.4(3) *Validity.* The SPR shall be valid for five years.

16.4(4) *Temporary authorization.* A temporary SPR will be issued for one school year if the class of license from the professional licensure division is temporary. A regular SPR will be issued with verification of a regular license and of at least a bachelor's degree in occupational therapy.

282—16.5(272) School physical therapist. A person who holds a degree or equivalent baccalaureate in physical therapy and a valid license to practice physical therapy in Iowa as granted by the professional licensure division, department of public health, may be issued a statement of professional recognition (SPR) by the board of educational examiners.

16.5(1) *Authorization.* The holder of this authorization can serve as a school physical therapist to pupils from birth to age 21 who have physical impairments (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The legalization for this support service personnel is through a statement of professional recognition (SPR) and not through teacher licensure.

16.5(2) *Requirements.*

a. The special education director (or designee) of the area education agency must submit a letter to the board of educational examiners to request that the authorization be issued.

b. An applicant must also submit the following documents:

(1) A copy of a temporary or regular license from the professional licensure division, department of public health.

(2) An official transcript.

16.5(3) *Validity.* The SPR shall be valid for five years.

16.5(4) *Temporary authorization.* A temporary SPR will be issued for one school year if the class of license from the professional licensure division is temporary. A regular SPR will be issued with verification of a regular license and of at least a bachelor's degree in physical therapy.

282—16.6(272) School social worker. A person who meets the requirements set forth below may be issued a statement of professional recognition (SPR) by the board of educational examiners.

16.6(1) *Authorization.* The holder of this statement of professional recognition 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).

16.6(2) *Requirements.* The special education director (or designee) of the area education agency or local education agency must submit an application to request that the authorization be issued. The application must include:

a. An official transcript that reflects the master's degree in social work; and

b. The licensed independent social worker (LISW) or licensed master social worker (LMSW) license issued by the Iowa board of social work.

16.6(3) *Validity.* The SPR shall be valid for five years.

16.6(4) *Temporary authorization.* A temporary SPR will be issued for one school year if the class of license from the professional licensure division is temporary. A regular SPR will be issued with verification of a regular license and a master's degree in social work.

[**ARC 3633C**, IAB 2/14/18, effective 3/21/18]

282—16.7(272) Special education nurse. A person who holds a baccalaureate degree in nursing or a master's degree in nursing, holds current licensure in the state of Iowa by the board of nursing and has two years' experience in public health nursing including service to schools or as a school nurse may be issued a statement of professional recognition (SPR) by the board of educational examiners.

16.7(1) *Authorization.* The holder of this authorization is authorized to serve as a special education nurse to pupils from birth to age 21 requiring special education (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The legalization for this support service personnel is through a statement of professional recognition (SPR) and not through teacher licensure.

16.7(2) *Requirements.*

a. The special education director (or designee) of the area education agency must submit a letter to the board of educational examiners to request that the SPR be issued.

b. An applicant must submit the following documents:

(1) A copy of the license issued by the Iowa board of nursing.

(2) An official transcript.

(3) Verification of two years' experience in public health nursing.

(4) Completion of an approved human relations course.

16.7(3) *Validity.* The SPR shall be valid for five years.

16.7(4) *Temporary authorization.* A temporary SPR will be issued for one school year. The applicant must provide evidence that:

a. A professional registered nurse who does not meet the criteria set forth in rule 282—16.7(272) must complete six semester credits of graduate or undergraduate coursework in special education within one school year after receiving temporary authorization; and

b. An approved human relations course must be completed before the start of the next school year.

282—16.8(272) Speech-language pathologist. If an applicant has completed a master's degree in speech pathology but has not completed the education sequence or chooses not to be certified, the applicant must obtain a license from the Iowa board of speech pathology and audiology, department of public health. Additionally, the person is required to obtain an SPR from the board of educational examiners.

16.8(1) *Authorization.* The holder of this statement of professional recognition 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).

16.8(2) *Requirements.* The special education director (or designee) of the area education agency must submit a letter requesting that the authorization be issued. The following documents must be included:

a. A copy of a temporary or regular license issued from the professional licensure division, department of public health.

b. An official transcript reflecting a master's degree in speech pathology.

16.8(3) *Validity.* The SPR shall be valid for five years.

16.8(4) *Temporary authorization.* A temporary SPR will be issued for one school year. An approved human relations course must be completed before the start of the next school year. The applicant must provide evidence that:

a. The applicant has completed the human relations component within the required time frame; and

b. The class of license from the professional licensure division is a regular license in the event a temporary license was issued initially.

[**ARC 3633C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code chapter 272.

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]

[Filed ARC 2230C (Notice ARC 2130C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]

[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

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) *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(2) *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(1)*"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]

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 one year 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]

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 18.4(2)*"a"* to *"g."*

18.5(2) Successfully meets each standard listed below:

a. *Shared vision.* An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The administrator:

(1) In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs.

(2) Uses research and best practices in improving the educational program.

(3) Articulates and promotes high expectations for teaching and learning.

(4) Aligns and implements the educational programs, plans, actions, and resources with the district's vision and goals.

(5) Provides leadership for major initiatives and change efforts.

(6) Communicates effectively to various stakeholders regarding progress with school improvement plan goals.

b. *Culture of learning.* An educational leader promotes the success of all students by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development. The administrator:

(1) Provides leadership for assessing, developing and improving climate and culture.

(2) Systematically and fairly recognizes and celebrates accomplishments of staff and students.

(3) Provides leadership, encouragement, opportunities and structure for staff to continually design more effective teaching and learning experiences for all students.

(4) Monitors and evaluates the effectiveness of curriculum, instruction and assessment.

(5) Evaluates staff and provides ongoing coaching for improvement.

(6) Ensures that staff members have professional development that directly enhances their performance and improves student learning.

(7) Uses current research and theory about effective schools and leadership to develop and revise the administrator's professional growth plan.

(8) Promotes collaboration with all stakeholders.

(9) Is easily accessible and approachable to all stakeholders.

(10) Is highly visible and engaged in the school community.

(11) Articulates the desired school culture and shows evidence about how it is reinforced.

c. *Management.* An educational leader promotes the success of all students by ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment. The administrator:

(1) Complies with state and federal mandates and local board policies.

(2) Recruits, selects, inducts, and retains staff to support quality instruction.

(3) Addresses current and potential issues in a timely manner.

(4) Manages fiscal and physical resources responsibly, efficiently, and effectively.

(5) Protects instructional time by designing and managing operational procedures to maximize learning.

(6) Communicates effectively with both internal and external audiences about the operations of the school.

d. Family and community. An educational leader promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

(1) Engages family and community by promoting shared responsibility for student learning and support of the education system.

(2) Promotes and supports a structure for family and community involvement in the education system.

(3) Facilitates the connections of students and families to the health and social services that support a focus on learning.

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]

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 traditional course-based preparation program and transcript review. A recognized non-Iowa administrator preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located. Applicants must hold and submit a copy of a valid or expired regular administrator certificate or license in the state in which the preparation was completed, 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 has not met any of the following requirements:

a. Professional core requirements. The applicant has not completed all of the required courses in the professional core in 281—subrules 79.15(2) and 79.15(3) and 281—paragraphs 79.15(5)*"a"* to *"k."*

b. Endorsement requirements. The applicant has not completed a minimum of 75 percent of the coursework for the PK-12 principal and PK-12 supervisor of special education endorsement, and any additional administrator endorsements desired.

c. Regular administrator certificate or license in the state in which the preparation was completed. The applicant is eligible for and has applied for a regular administrator certificate or license in the state in which the preparation was completed but has not yet received the certificate or license.

d. Approved evaluator training requirement. The applicant has not completed the approved evaluator training requirement.

18.6(2) *Conversion.* Each applicant who receives the one-year administrator exchange license must complete any identified licensure 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 through a regionally accredited institution, with the exception of the human relations component which may be taken for licensure renewal credit through an approved provider.

[**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]

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.

1. Knowledge of early childhood, elementary, early adolescent and secondary level administration, supervision, and evaluation.

2. Knowledge and skill related to early childhood, elementary, early adolescent and secondary level curriculum development.

3. Knowledge of child growth and development from birth through adolescence and developmentally appropriate strategies and practices of early childhood, elementary, and adolescence, to include an observation practicum.

4. Knowledge of family support systems, factors which place families at risk, child care issues, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.

5. Knowledge of school law and legislative and public policy issues affecting children and families.

6. Completion of evaluator training component.

7. Knowledge of current issues in special education administration.

8. Planned field experiences in elementary and secondary school administration, including special education administration.

9. Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.

• Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

• Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.

• Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

• Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.

• Acts with integrity, fairness, and in an ethical manner.

• Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

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]

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, the administrator has knowledge and understanding of:

(1) Models, theories, and practices that provide the basis for leading educational systems toward improving student performance.

(2) Federal, state and local fiscal policies related to education.

(3) Human resources management, including recruitment, personnel assistance and development, evaluation and negotiations.

(4) Current legal issues in general and special education.

(5) Noninstructional support services management including but not limited to transportation, nutrition and facilities.

(6) Practicum in PK-12 school administration. In the coursework and the practicum, the administrator facilitates processes and engages in activities for:

1. Developing a shared vision of learning through articulation, implementation, and stewardship.

2. Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

3. Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

4. Collaborating with school staff, families, community members and boards of directors; responding to diverse community interests and needs; and mobilizing community resources.

5. Acting with integrity, fairness, and in an ethical manner.

6. Understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

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]

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—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.

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 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.

d. *Experience.* An applicant must meet the experience requirement set forth in 18.10(3).

e. *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.

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]

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.

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]
[Filed ARC 8141B (Notice ARC 7873B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8142B (Notice ARC 7874B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed Emergency ARC 8248B, IAB 11/4/09, effective 10/12/09]
[Filed ARC 8958B (Notice ARC 8687B, IAB 4/7/10), IAB 7/28/10, effective 9/1/10]
[Filed ARC 9075B (Notice ARC 8830B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9383B (Notice ARC 9199B, IAB 11/3/10), IAB 2/23/11, effective 3/30/11]
[Filed ARC 9384B (Notice ARC 9200B, IAB 11/3/10), IAB 2/23/11, effective 3/30/11]
[Filed ARC 9385B (Notice ARC 9201B, IAB 11/3/10), IAB 2/23/11, effective 3/30/11]
[Filed ARC 9453B (Notice ARC 9306B, IAB 12/29/10), IAB 4/6/11, effective 5/11/11]
[Filed ARC 0564C (Notice ARC 0444C, IAB 11/14/12), IAB 1/23/13, effective 2/27/13]
[Filed ARC 0607C (Notice ARC 0493C, IAB 12/12/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 0872C (Notice ARC 0703C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0874C (Notice ARC 0701C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 1167C (Notice ARC 0988C, IAB 9/4/13), IAB 11/13/13, effective 12/18/13]
[Filed ARC 1326C (Notice ARC 1234C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]
[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 2631C (Notice ARC 2454C, IAB 3/16/16), IAB 7/20/16, effective 8/24/16]
[Filed ARC 3196C (Notice ARC 3012C, IAB 4/12/17), IAB 7/5/17, effective 8/9/17]
[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 21
CONVERSION INFORMATION

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 18]

Rescinded **ARC 3633C**, IAB 2/14/18, effective 3/21/18

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. *Credit hours.* Applicants must complete credit hours in the following areas:

(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 training. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. This certification may be used for a maximum of one planned activity/course required in 22.1(4)*"a"*(1). A waiver of this requirement may apply if a person is engaged in active duty in the military service of this state or of the United States.

(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 an approved child and dependent adult abuse mandatory reporter training course.

(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]

282—22.2(272) Substitute authorization. A substitute authorization allows an individual to substitute in grades PK-12 for no more than 5 consecutive days and no more than 10 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 on the basis of documented need and benefit to the instructional program. The licensure committee will review the request and provide a written decision either approving or denying the request. An individual who holds a paraeducator certificate without a bachelor's degree and completes the substitute authorization program is authorized to substitute only in the special education classroom in which the individual paraeducator is employed. For these individuals, the authorization will appear on the paraeducator certificate and will not include separate renewal requirements.

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.

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 at least one of the following:

1. Hold a baccalaureate degree or higher from a regionally accredited institution.

2. Completed an approved paraeducator certification program and hold a paraeducator certificate.

(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 training. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

1. A person is engaged in active duty in the military service of this state or of the United States.

2. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

3. A person is practicing a licensed profession outside this state.

4. A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

5. The person has previously renewed a license or another authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.

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]

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.

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 training. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse mandatory reporter training approved by the state abuse education review panel. A waiver of this requirement may apply under any of the following appropriately documented conditions:

(1) The person is engaged in active duty in the military service of this state or of the United States.

(2) The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

(3) The person is practicing in a licensed profession outside this state.

(4) The person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse mandatory reporter training in this state.

(5) The person has previously renewed a license or another authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse mandatory reporter training approved by the state abuse education review panel.

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]

282—22.4(272) Licenses—issue dates, corrections, duplicates, and fraud.

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.

[**ARC 9572B**, IAB 6/29/11, effective 8/3/11]

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.

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]

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.* Applicanats 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 training. Every renewal applicant must submit documentation of completion of the child and dependent adult abuse mandatory reporter training approved by the state abuse education review panel. A waiver of this requirement may apply under any of the following appropriately documented conditions:

1. The person is engaged in active duty in the military service of this state or of the United States.

2. The person has previously renewed a license or another authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse mandatory reporter training approved by the state abuse education review panel.

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]

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/.

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. An applicant for this authorization must have completed 6,000 hours of recent and relevant career and technical experience in the teaching endorsement area sought. If the candidate also holds a bachelor's degree, the experience requirement is 4,000 hours. This 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 college credit from a regionally accredited institution.

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]

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.

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 from a regionally accredited institution 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 from a regionally accredited institution.

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]

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]

These rules are intended to implement Iowa Code chapter 272.

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]
[Filed ARC 7745B (Notice ARC 7329B, IAB 11/5/08), IAB 5/6/09, effective 6/10/09]
[Filed ARC 9572B (Notice ARC 9381B, IAB 2/23/11), IAB 6/29/11, effective 8/3/11]
[Filed ARC 0562C (Notice ARC 0443C, IAB 11/14/12), IAB 1/23/13, effective 2/27/13]
[Filed ARC 0865C (Notice ARC 0676C, IAB 4/3/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0866C (Notice ARC 0696C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 0869C (Notice ARC 0704C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 1086C (Notice ARC 0877C, IAB 7/24/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1087C (Notice ARC 0878C, IAB 7/24/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1322C (Notice ARC 1180C, IAB 11/13/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1542C (Notice ARC 1379C, IAB 3/19/14), IAB 7/23/14, effective 8/27/14]
[Filed ARC 1720C (Notice ARC 1552C, IAB 7/23/14), IAB 11/12/14, effective 12/17/14]
[Filed ARC 1719C (Notice ARC 1551C, IAB 7/23/14), IAB 11/12/14, effective 12/17/14]
[Filed ARC 1721C (Notice ARC 1604C, IAB 9/3/14), IAB 11/12/14, effective 12/17/14]
[Filed ARC 1718C (Notice ARC 1605C, IAB 9/3/14), IAB 11/12/14, effective 12/17/14]
[Filed ARC 2015C (Notice ARC 1917C, IAB 3/18/15), IAB 6/10/15, effective 7/15/15]
[Filed ARC 2121C (Notice ARC 2024C, IAB 6/10/15), IAB 9/2/15, effective 10/7/15]
[Filed ARC 2230C (Notice ARC 2130C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]
[Filed ARC 2528C (Notice ARC 2411C, IAB 2/17/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 2588C (Notice ARC 2445C, IAB 3/16/16), IAB 6/22/16, effective 7/27/16]
[Filed ARC 2793C (Notice ARC 2690C, IAB 8/31/16), IAB 11/9/16, effective 12/14/16][1]
[Filed ARC 3196C (Notice ARC 3012C, IAB 4/12/17), IAB 7/5/17, effective 8/9/17]
[Filed ARC 3633C (Notice ARC 3471C, IAB 12/6/17), IAB 2/14/18, effective 3/21/18]

[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.

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). 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]

282—27.2(272) Requirements for a professional service license.

27.2(1) *Initial professional service license.* An initial professional service license valid for two years 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 from a regionally accredited institution.

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. Meets the recency requirement of 282—subparagraph 13.5(2)*"b"*(4).

e. 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 27.2(1)*"a"* to *"d."*

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.

c. Meets the recency requirement of 282—subparagraph 13.5(2)*"b"*(4).

27.2(3) *Renewal.* Renewal requirements for this license are set out in 282—Chapter 20.

[**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]

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 the hearing impaired), 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 hearing impaired 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—paragraph 15.7(5)*"b"* or 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 have hearing impairments (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]

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. These units may be earned in any combination listed below:

a. One unit may be earned for each semester hour of graduate credit, completed from a regionally accredited institution, 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, completed from a regionally accredited institution, 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, completed from a regionally accredited institution, 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.

[**ARC 8609B**, IAB 3/10/10, effective 4/14/10]

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]
[Filed ARC 1328C (Notice ARC 1236C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]
[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]

PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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[Prior to 8/7/02, see 645—325.6(148C) to 645—325.9(148C) and 645—325.18(148C)]

645—327.1(148C) Duties.

327.1(1) The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks for which the supervising physician has sufficient training or experience may be delegated to the physician assistant after a supervising physician determines the physician assistant's proficiency and competence. The medical services to be provided by the physician assistant include, but are not limited to, the following:

a. The initial approach to a patient of any age group in any setting to elicit a medical history and perform a physical examination.

b. Assessment, diagnosis and treatment of medical or surgical problems and recording the findings.

c. Order, interpret, or perform laboratory tests, X-rays or other medical procedures or studies.

d. Performance of therapeutic procedures such as injections, immunizations, suturing and care of wounds, removal of foreign bodies, ear and eye irrigation and other clinical procedures.

e. Performance of office surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

f. Assisting in surgery.

g. Prenatal and postnatal care and assisting a physician in obstetrical care.

h. Care of orthopedic problems.

i. Performing and screening the results of special medical examinations including, but not limited to, electrocardiogram or Holter monitoring, radiography, audiometric and vision screening, tonometry, and pulmonary function screening tests.

j. Instruction and counseling of patients regarding physical and mental health on matters such as diets, disease, therapy, and normal growth and development.

k. Function in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders as delegated by the supervising physician.

l. Providing services to patients requiring continuing care (i.e., home, nursing home, extended care facilities).

m. Referring patients to specialty or subspecialty physicians, medical facilities or social agencies as indicated by the patients' problems.

n. Immediate evaluation, treatment and institution of procedures essential to providing an appropriate response to emergency medical problems.

o. Order drugs and supplies in the office, and assist in keeping records and in the upkeep of equipment.

p. Admit patients to a hospital or health care facility.

q. Order diets, physical therapy, inhalation therapy, or other rehabilitative services as indicated by the patient's problems.

r. Administer any drug (a single dose).

s. Prescribe drugs and medical devices under the following conditions:

(1) The physician assistant shall have passed the national certifying examination conducted by the National Commission on the Certification of Physician Assistants or its successor examination approved by the board. Physician assistants with a temporary license may order drugs and medical devices only with the prior approval and direction of a supervising physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen by the physician assistant.

(2) The physician assistant may not prescribe Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124. The physician assistant may order Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124 only with the prior approval and direction of a physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen by the physician assistant.

(3) The physician assistant shall inform the board of any limitation on the prescriptive authority of the physician assistant in addition to the limitations set out in 327.1(1)*"s"*(2).

(4) A physician assistant shall not prescribe substances that the supervising physician does not have the authority to prescribe except as allowed in 327.1(1)*"n."*

(5) The physician assistant may prescribe, supply and administer drugs and medical devices in all settings including, but not limited to, hospitals, health care facilities, health care institutions, clinics, offices, health maintenance organizations, and outpatient and emergency care settings except as limited by 327.1(1)*"s"*(2).

(6) A physician assistant who is an authorized prescriber may request, receive, and supply sample drugs and medical devices except as limited by 327.1(1)*"s"*(2).

(7) The board of physician assistants shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices.

t. Supply properly packaged and labeled prescription drugs, controlled substances or medical devices when pharmacist services are not reasonably available or when it is in the best interests of the patient as delegated by a supervising physician.

(1) When the physician assistant is the prescriber of the medications under 327.1(1)*"s,"* these medications shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs as they relate to supplying prescription drugs to the patient and not at a profit to the physician or physician assistant.

(2) When a physician assistant supplies medication on the direct order of a physician, subparagraph (1) does not apply.

(3) A nurse or staff assistant may assist the physician assistant in supplying medications when prescriptive drug supplying authority is delegated by a supervising physician to the physician assistant under 327.1(1)*"s."*

u. When a physician assistant supplies medications as delegated by a supervising physician in a remote site, the physician assistant shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage and appropriate use of presciption drugs, controlled substances, and medical devices.

v. May, at the request of the peace officer, withdraw a specimen of blood from a patient for the purpose of determining the alcohol concentration or the presence of drugs.

w. Direct medical personnel, health professionals and others involved in caring for patients in the execution of patient care.

x. May authenticate medical forms by signing the form and including a supervising physician's name.

y. Perform other duties appropriate to a physician's practice.

z. Health care providers shall consider the instructions of the physician assistant to be instructions of a supervising physician if the instructions concern duties delegated to the physician assistant by the supervising physician.

327.1(2) Emergency medicine duties.

a. A physician assistant may be a member of the staff of an ambulance or rescue squad pursuant to Iowa Code chapter 147A.

b. A physician assistant shall document skills, training and education equivalent to that required of a certified advanced emergency medical technician or a paramedic.

c. A physician assistant must apply for approval of advanced care training equivalency on forms supplied by the board of physician assistants.

d. Exceptions to this subrule include:

(1) A physician assistant who accompanies and is responsible for a transfer patient;

(2) A physician assistant who serves on a basic ambulance or rescue squad service; and

(3) A physician assistant who renders aid within the physician assistant's skills during an emergency.

645—327.2(148C) Prohibition. No physician assistant shall be permitted to prescribe lenses, prisms or contact lenses for the aid, relief or correction of human vision. No physician assistant shall be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where these services are rendered.

645—327.3(148C) Free medical clinic. Rescinded IAB 9/15/04, effective 8/25/04.

645—327.4(148C) Remote medical site.

327.4(1) A physician assistant may provide medical services in a remote medical site if one of the following three conditions is met:

a. The physician assistant has a permanent license and at least one year of practice as a physician assistant; or

b. The physician assistant with less than one year of practice has a permanent license and meets the following criteria:

(1) The physician assistant has practiced as a physician assistant for at least six months; and

(2) The physician assistant and supervising physician have worked together at the same location for a period of at least three months; and

(3) The supervising physician reviews patient care provided by the physician assistant at least weekly; and

(4) The supervising physician signs all patient charts unless the medical record documents that direct consultation with the supervising physician occurred; or

c. The physician assistant and supervising physician provide a written statement sent directly to the board that the physician assistant is qualified to provide the needed medical services and that the medical care will be unavailable at the remote site unless the physician assistant is allowed to practice there. In addition, for three months the supervising physician must review patient care provided by the physician assistant at least weekly and must sign all patient charts unless the medical record documents that direct consultation with the supervising physician occurred.

327.4(2) A supervising physician must visit a remote site to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in special circumstances. When visits are less frequent than every two weeks in unusual or emergency circumstances, the board shall be notified in writing of these circumstances.

[**ARC 1909C**, IAB 3/18/15, effective 4/22/15; see Delay note at end of chapter; **ARC 2436C**, IAB 3/16/16, effective 2/16/16]

645—327.5(147) Identification as a physician assistant. The physician assistant shall be identified as a physician assistant to patients and to the public.

645—327.6(147) Prescription requirements.

327.6(1) Each written outpatient prescription drug order issued by a physician assistant shall contain the following:

a. The date of issuance.

b. The name and address of the patient for whom the drug is prescribed.

c. The name, strength, and quantity of the drug, medicine, or device prescribed and directions for use.

d. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Notification may include, but is not limited to, including the physician's name on the prescription, including the physician's name in the memo section of an electronic prescription, or providing the physician's name by telephone or other electronic means. If, in an electronic prescription record, the record does not include a dedicated field for the name of the supervising physician, a memo or comment field may be used to record the supervising physician's name by entering the code "SP01" and then the supervising physician's name prior to any other comment in the memo or comment field.

e. The physician assistant's name and the practice address.

f. The signature of the physician assistant followed by the initials "PA."

g. The Drug Enforcement Administration (DEA) number of the physician assistant if the prescription is for a controlled substance.

All other prescriptions shall comply with paragraph *"d."*

327.6(2) Each oral prescription drug order issued by a physician assistant shall include the same information required for a written prescription, except for the written signature of the physician assistant and the address of the practitioners.

[**ARC 9217B**, IAB 11/3/10, effective 12/8/10; **ARC 9844B**, IAB 11/16/11, effective 12/21/11]

645—327.7(147) Supplying—requirements for containers, labeling, and records.

327.7(1) *Containers.* A prescription drug shall be supplied in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. §§1471-1476 (1976), which relate to childproof closure, unless otherwise requested by the patient. The containers must also meet the requirements of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq. (1976), which pertain to light resistance and moisture resistance needs of the drug supplied.

327.7(2) *Labeling.* A label bearing the following information shall be affixed to a container in which a prescription drug is supplied:

a. The name and practice address of the supervising physician and physician assistant.

b. The name of the patient.

c. The date supplied.

d. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician assistant.

e. The name, strength and quantity of the prescription drug in the container.

f. When supplying Schedule II, III, or IV controlled substances, the federal transfer warning statement must appear on the label as follows: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

327.7(3) *Samples.* Prescription sample drugs will be provided without additional charge to the patient. Prescription sample drugs supplied in the original container or package shall be deemed to conform to labeling and packaging requirements.

327.7(4) *Records.* A record of prescription drugs supplied by the physician assistant to a patient shall be kept which contains the label information required by paragraphs 327.7(2)*"b"* to *"e."* Noting such information on the patient's chart or record is sufficient.

645—327.8(148C) Sharing information. When the board receives a complaint alleging that inadequate supervision by a physician assistant's supervising physician may have occurred, the board shall forward a copy of that complaint to the board of medicine. Any response to the complaint, filed with the board by the physician assistant, will also be shared with the board of medicine.

[**ARC 3642C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

[Filed 7/19/02, Notice 4/3/02—published 8/7/02, effective 9/11/02]

[Filed 4/22/04, Notice 2/18/04—published 5/12/04, effective 6/16/04][1]
[Filed emergency 8/25/04—published 9/15/04, effective 8/25/04]
[Filed 10/18/06, Notice 8/16/06—published 11/8/06, effective 12/13/06]
[Filed 10/19/07, Notice 8/15/07—published 11/7/07, effective 12/12/07]
[Filed ARC 9217B (Notice ARC 8775B, IAB 6/2/10), IAB 11/3/10, effective 12/8/10]
[Filed ARC 9844B (Notice ARC 9580B, IAB 6/29/11), IAB 11/16/11, effective 12/21/11]
[Filed ARC 1909C (Notice ARC 1741C, IAB 11/26/14), IAB 3/18/15, effective 4/22/15][2]
[Filed Emergency ARC 2436C, IAB 3/16/16, effective 2/16/16]
[Filed ARC 3642C (Notice ARC 3455C, IAB 11/22/17), IAB 2/14/18, effective 3/21/18]

[1] June 16, 2004, effective date of amendments published in ARC 3345B delayed 70 days by the Administrative Rules Review Committee at its meeting held June 7, 2004.

[2] April 22, 2015, effective date of ARC 1909C [327.4(2)] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at a special meeting held April 20, 2015. At its meeting held February 5, 2016, the Committee extended the delay 70 days beyond the adjournment of the 2016 General Assembly.

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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CHAPTER 2
PHARMACIST LICENSES

[Prior to 2/10/88, see Pharmacy Examiners[620] Chs 1, 5]

657—2.1(147,155A) Licensure by examination. The board of pharmacy, in conjunction with the National Association of Boards of Pharmacy (NABP), shall provide for the administration of pharmacist licensure examinations.

2.1(1) *Components.* Applicants shall take and pass the following components: the North American Pharmacist Licensure Examination (NAPLEX); the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition. A total scaled score of no less than 75 is required to pass each examination.

2.1(2) *Timeliness.* To be eligible for a license by examination, the candidate shall pass all components in Iowa within a period of one year beginning with the date the candidate passed an initial component. A candidate may request waiver or variance from this deadline pursuant to the procedures and requirements of 657—Chapter 34.

657—2.2(155A) Application for examination—requirements. Application for examination shall be on forms provided by the board, and all requested information shall be provided on or with such application. An applicant shall complete the NABP Computerized Examination Registration Form to apply for registration to take the NAPLEX. An applicant shall complete an additional registration form to apply for registration to take the MPJE, Iowa Edition.

2.2(1) *Required information.* The application for examination shall require that the applicant provide, at a minimum, the following: name; address; telephone number; date of birth; social security number or individual tax identification number (ITIN); name and location of college of pharmacy and date of graduation; one current photograph of a quality at least similar to a passport photograph; and internship experience. If the applicant provides an ITIN in lieu of a social security number, the applicant shall also provide acceptable proof of lawful presence. Each applicant shall also declare the following: history of prior pharmacist licensure examinations and record of offenses including but not limited to charges, convictions, and fines which relate to the profession or that may affect the licensee's ability to practice pharmacy.

2.2(2) *Sworn statement.* The application for examination shall be made as a sworn statement before a notary public, and the notary public shall witness the signature of the applicant.

[**ARC 3636C**, IAB 2/14/18, effective 3/21/18]

657—2.3(147,155A) Examination fee. The fee for examination shall consist of the biennial license fee, a processing fee, administration fees, and examination registration fees.

2.3(1) *Fees to the board.* The biennial license fee shall be the fee established by rule 657—2.11(147,155A), including surcharge. The processing fee shall be $72. No refunds of the processing fee shall be made for cancellation or withdrawal of applications. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy and may be remitted in the form of personal check, money order, cashier's check, or certified check. No refund of fees shall be made for failure to complete all licensure requirements within the period specified in subrule 2.1(2).

2.3(2) *Fees to NABP.* The examination registration and administration fees shall be amounts determined by NABP, shall be payable to the National Association of Boards of Pharmacy, and shall be in the form of a certified check or money order. Refunds of fees paid to NABP shall be at the discretion of NABP.

2.3(3) *Submission of forms and fees.* The biennial license fee including surcharge, the processing fee, the administration fees, and the examination registration fees shall accompany the applications and registration forms and shall be submitted to the Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or as otherwise directed by the board.

[**ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—2.4(155A) Internship requirements. Each applicant shall furnish to the board evidence certifying completion of satisfactory internship experience. The board will not certify an applicant

eligible to take any of the examination components prior to receipt of evidence of satisfactory completion of internship experience. Internship experience shall comply with the requirements in 657—Chapter 4. Internship experience completed in compliance with the requirements in 657—Chapter 4 shall be valid for application for licensure in Iowa by examination or score transfer for a period of three years following graduation from an approved college of pharmacy or as otherwise approved by the board on a case-by-case basis.

657—2.5(155A) College graduate certification. Each applicant shall furnish a certificate from a recognized college of pharmacy stating that the applicant has successfully graduated from a school or college of pharmacy with either a bachelor of science degree in pharmacy or a doctor of pharmacy (Pharm.D.) degree. Certification shall be completed by an individual authorized by the college on a form provided by the board. A recognized college of pharmacy is a United States institution that meets the minimum standards of the Accreditation Council on Pharmaceutical Education and appears on its list of accredited colleges of pharmacy published by the council as of July 1 of each year.
[Editorial change: IAC Supplement 2/6/13]

657—2.6(147) Reexamination applications and fees. A candidate who fails to pass either the NAPLEX or the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination as provided in this rule. To ensure the integrity of the examinations, no waiver or variance of the specified waiting period between reexaminations will be granted.

2.6(1) *NAPLEX.* A candidate who fails to pass the NAPLEX once shall be allowed to schedule a time to retake the examination no less than 45 days following administration of the failed examination. The candidate may be approved to retake the NAPLEX no more than three times in a 12-month period.

2.6(2) *MPJE, Iowa Edition.* A candidate who fails to pass the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination no less than 30 days following administration of the failed examination.

2.6(3) *Reexamination after two or more attempts.* A candidate who fails to pass either examination following a second or subsequent examination may petition the board for permission to take the examination again. Determination of a candidate's eligibility to take an examination more than two times shall be at the discretion of the board.

2.6(4) *Applications and fees.* Each applicant for reexamination shall file an application on forms provided by the board. A processing fee of $36 will be charged for each NAPLEX or MPJE, Iowa Edition, reexamination and shall be paid to the board as provided in subrule 2.3(1). In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 657—2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).
[**ARC 0504C**, IAB 12/12/12, effective 1/16/13; **ARC 3099C**, IAB 6/7/17, effective 7/12/17]

657—2.7(147) Examination results. Examination scores and original license certificates shall be provided to each new licensee as soon after the examinations as possible.

657—2.8(155A) Transfer of examination scores. The board of pharmacy participates in the NAPLEX score transfer program offered by NABP. This program allows candidates for pharmacist licensure to take the standardized NAPLEX in one state and have the score from that examination transferred to other participant states in which the candidate is seeking licensure. MPJE scores cannot be transferred.

2.8(1) *Score transfer application.* The NAPLEX Score Transfer Form must be completed and submitted with the proper fee to NABP prior to, or postmarked no later than, the date on which the candidate takes the NAPLEX. The fee to NABP for score transfer is determined by NABP. Payment shall be made in the form of a money order or certified check payable to the National Association of Boards of Pharmacy. NABP makes no refunds of score transfer fees.

2.8(2) *Requirements and deadline.* Score transfer candidates shall meet the requirements established in rules 657—2.1(147,155A) through 657—2.5(155A) within 12 months of the date of transfer. No

refund of fees paid to the board will be made for failure to complete all licensure requirements within this one-year period.

2.8(3) *Fees.* In addition to the score transfer fee identified in subrule 2.8(1), fees for licensure pursuant to the NABP score transfer program shall consist of the fees identified in rule 657—2.3(147,155A) excluding the NAPLEX examination registration and administration fees.

657—2.9(147,155A) Licensure by license transfer/reciprocity. An applicant for license transfer/reciprocity must be a pharmacist licensed by examination in a state or territory of the United States with which Iowa has a reciprocal agreement, and the license by examination upon which the transfer is based must be in good standing at the time of the application and license transfer. All candidates shall take and pass the MPJE, Iowa Edition, as provided in subrule 2.1(1). Any candidate who fails to pass the examination shall be eligible for reexamination as provided in rule 657—2.6(147).

2.9(1) *Eligibility.* Each applicant for license transfer to this state who obtains the applicant's original license after January 1, 1980, must have passed the NABP Licensure Examination (NABPLEX), the NAPLEX, or an equivalent examination as determined by NABP.

a. Preliminary application. Each applicant for license transfer/reciprocity to Iowa shall complete and submit to NABP, with the appropriate fee as indicated on the application, the NABP Preliminary Application for Transfer of Pharmaceutic Licensure. Refunds of fees paid to NABP shall be at the discretion of NABP.

b. Foreign pharmacy graduates. If the applicant is a graduate of a school or college of pharmacy located outside the United States that has not been recognized and approved by the board, proof of qualifications shall include certification from the FPGEC pursuant to subrule 2.10(1).

2.9(2) *Application requirements.* Application to the board shall consist of the final application for license transfer prepared by NABP pursuant to the NABP license transfer program. A foreign pharmacy graduate shall submit certification from the FPGEC as provided in subrule 2.10(1). Applications, together with other required information and fees, shall be submitted as provided in subrule 2.3(3).

2.9(3) *MPJE required.* An applicant shall also be required to submit the registration application for MPJE, Iowa Edition, as provided in rule 657—2.2(155A). The form and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

2.9(4) *Fees.* The fee for license transfer shall consist of the biennial license fee established by rule 657—2.11(147,155A) including surcharge and a processing fee of $90. No refunds of the processing fee shall be made for cancellation or withdrawal of an application. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy and may be remitted in the form of personal check, money order, cashier's check, or certified check.

2.9(5) *Timeliness.* A final application for license transfer is valid for 12 months following the date of issuance by NABP. A candidate for license transfer shall complete, within that one-year period, all licensure requirements established by this rule. No refund of fees will be made for failure to complete all licensure requirements within this one-year period.

[**ARC 0504C**, IAB 12/12/12, effective 1/16/13; **ARC 1031C**, IAB 9/18/13, effective 10/23/13]

657—2.10(155A) Foreign pharmacy graduates.

2.10(1) *Education equivalency.* Any applicant who is a graduate of a school or college of pharmacy located outside the United States that has not been recognized and approved by the board shall be deemed to have satisfied the requirements of Iowa Code section 155A.8, subsection 1, by certification by the Foreign Pharmacy Graduate Examination Committee (FPGEC). Each applicant shall have successfully passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) given by the FPGEC established by the NABP. The FPGEE is hereby recognized and approved by the board. Each applicant shall also demonstrate proficiency in written English by passing the Test of English as a Foreign Language (TOEFL) and proficiency in spoken English by passing the Test of Spoken English (TSE) or proficiency in basic English language skills by passing the Internet Based TOEFL (TOEFL iBT). The TOEFL, TOEFL iBT, and TSE are hereby recognized and approved by the board. Certification by the FPGEC shall be evidence of the applicant's successfully passing the FPGEE, TSE,

and TOEFL, or the FPGEE and TOEFL iBT, and certification is a prerequisite to taking the licensure examinations required in subrule 2.1(1).

2.10(2) *Internship.* A foreign pharmacy graduate applicant shall also be required to obtain internship experience in one or more board-licensed community or hospital pharmacies as provided in rule 657—4.7(155A). Internship requirements shall, in all other aspects, meet the requirements established in 657—Chapter 4.

657—2.11(147,155A) License expiration and renewal. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, with the exception that a new pharmacist license issued between April 1 and June 29 shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and timely payment of a $180 fee plus applicable surcharge pursuant to 657—30.8(155A).

2.11(1) *Late payment penalty.* Failure to renew the license before July 1 following expiration shall require payment of the renewal fee, a penalty fee of $180, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before August 1 following expiration shall require payment of the renewal fee, a penalty fee of $270, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before September 1 following expiration shall require payment of the renewal fee, a penalty fee of $360, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before October 1 following expiration may require an appearance before the board and shall require payment of the renewal fee, a penalty fee of $450, and applicable surcharge pursuant to 657—30.8(155A). In no event shall the combined fee and penalty fee for late renewal of the license exceed $630 plus applicable surcharge pursuant to 657—30.8(155A). The provisions of Iowa Code section 147.11 shall apply to a license that is not renewed within five months of the expiration date.

2.11(2) *Delinquent license.* If a license is not renewed before its expiration date, the license is delinquent and the licensee may not practice pharmacy in the state of Iowa until the licensee reactivates the delinquent license. Reactivation of a delinquent license shall include submission of a completed application and appropriate fees and may include requirements relating to the reactivation of an inactive license pursuant to subrule 2.13(2). A pharmacist who continues to practice pharmacy in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

[**ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—2.12(272C) Continuing education requirements. Pharmacists shall complete continuing education for license renewal pursuant to the requirements of this rule. For purposes of this rule, "continuing education" means a structured educational activity that is applicable to the practice of pharmacy, that promotes problem solving and critical thinking, and that is designed or intended to support the continuing development of pharmacists to maintain and enhance their competence in the practice of pharmacy. Nothing in these rules precludes the board from requiring an applicant for renewal to submit to a relicensure examination.

2.12(1) *Continuing education unit required.* The nationally accepted measurement of continuing education is referred to as CEU (continuing education unit), and the board employs that measurement. Ten contact hours of approved continuing education are equivalent to one CEU.

a. The board will require 3.0 CEUs each renewal period except as provided in subrule 2.12(5) or rule 657—2.17(272C). For purposes of this rule, "renewal period" means the 27-month period commencing April 1 prior to the previous license expiration and ending June 30, the date of current license expiration.

b. A pharmacist who fails to complete the required CEUs within the renewal period shall be required to complete one and one-half times the number of delinquent CEUs prior to reactivation of the license.

c. CEUs that are used to satisfy the continuing education requirement for one renewal period shall not be used to satisfy the requirement for a subsequent renewal period.

d. Failure to receive a license renewal application or notice of license renewal shall not relieve the pharmacist of the responsibility of meeting continuing education requirements.

2.12(2) *Continuing education activity completion.* Continuing education activities that carry the seal of an Accreditation Council for Pharmacy Education (ACPE)-accredited provider will automatically qualify for continuing education credit. Successful completion and record of continuing education activities in CPE Monitor is mandated in order for a pharmacist to receive credit for ACPE-accredited provider continuing education activities.

a. Non-ACPE provider activity. A maximum of 1.3 CEUs (13 contact hours) of the total 3.0 CEUs of continuing education credits required pursuant to subrule 2.12(4) may be obtained through completion of non-ACPE provider activities if such activities are provided by an accredited health-professional continuing education provider, such as a continuing medical education (CME) provider, and if the activity content directly relates to the pharmacist's professional practice. Non-ACPE provider activity completion shall be recorded, evaluated, and reported pursuant to the provisions of rule 657—2.17(272C) regarding continuing professional development.

(1) The pharmacist is responsible for ensuring that the activity content directly relates to the pharmacist's professional practice.

(2) If one or more non-ACPE provider activities are intended to fulfill the requirement in paragraph 2.12(4)*"c,"* the pharmacist is responsible for ensuring the activity content relates to patient or medication safety.

(3) If the non-ACPE provider is not able to transmit the activity record to CPE Monitor, the provider shall provide to the pharmacist a statement of credit that indicates the pharmacist's participation in and successful completion of the continuing education activity. The statement of credit shall include all information identified in subrule 2.12(3), except for the pharmacist's CPE Monitor e-profile identification number.

b. Exemption for health-related graduate studies. A pharmacist who is continuing formal education in a health-related graduate program, including participation in a pharmacy residency program, may be exempted from meeting the continuing education requirements during the period of such enrollment or participation. As an alternative to requesting exemption from meeting the continuing education requirements, the pharmacist may complete a CPD portfolio pursuant to rule 657—2.17(272C).

(1) An applicant for this exemption shall petition the board, as soon as possible following enrollment in the qualifying graduate program or commencement of the pharmacy residency program and prior to completion of the qualifying program, on forms provided by the board office.

(2) At the discretion of the board, exemption during part-time or short-term enrollment in a health-related graduate program may be prorated for the actual period of such enrollment.

2.12(3) *Continuing education activity record of credit.* An ACPE-accredited provider will be required to transmit to CPE Monitor information regarding an individual pharmacist's participation in and successful completion of a continuing education activity. The record shall be accessible to the board and shall include the following information:

a. Pharmacist's full name and CPE Monitor e-profile identification number.

b. Number of contact hours or CEUs awarded for activity completion.

c. Date of live activity or date of completion of home study activity.

d. Name of accredited provider.

e. Activity title and universal activity number.

2.12(4) *Continuing education activity topics.* Each pharmacist is required to obtain continuing education by completing activities in the topics specified in this subrule.

a. Drug therapy. A minimum of 1.5 CEUs (15 contact hours) of the pharmacist's required 3.0 CEUs shall be in ACPE-accredited provider activities dealing with drug therapy. Activities qualifying for the drug therapy requirement will include the ACPE topic designator "01" or "02" followed by the letter "P" at the end of the universal activity number.

b. *Pharmacy law.* A minimum of 0.2 CEUs (2 contact hours) of the pharmacist's required 3.0 CEUs shall be in ACPE-accredited provider activities dealing with pharmacy law. Activities qualifying for the pharmacy law requirement will include the ACPE topic designator "03" followed by the letter "P" at the end of the universal activity number.

c. *Patient or medication safety.* A minimum of 0.2 CEUs (2 contact hours) of the pharmacist's required 3.0 CEUs shall be in activities dealing with patient or medication safety. Activities completed to fulfill this requirement may be ACPE-accredited provider activities, in which case the universal activity number will end with the ACPE topic designator "05" followed by the letter "P." A pharmacist may complete non-ACPE provider activities as provided in paragraph 2.12(2)*"a"* to fulfill this topic requirement.

2.12(5) *New license holders licensed by examination.* After the initial license is issued by examination, the new license holder is exempt from meeting continuing education requirements for the first license renewal. However, if the licensee qualifies as a mandatory abuse reporter, the licensee shall not be exempt from mandatory training for identifying and reporting abuse pursuant to rule 657—2.16(235B,272C). Regardless of when the license is first issued, the new license holder will be required to obtain, prior to the second renewal, 30 contact hours (3.0 CEUs) of continuing education pursuant to subrules 2.12(1) through 2.12(4) or to complete a CPD portfolio pursuant to rule 657—2.17(272C).

2.12(6) *New license holders licensed by license transfer/reciprocity.* After the initial license is issued by license transfer, the new license holder will be required to obtain, prior to the first license renewal, 30 contact hours (3.0 CEUs) of continuing education credits pursuant to subrules 2.12(1) through 2.12(4) or to complete a CPD portfolio pursuant to rule 657—2.17(272C).

2.12(7) *Reporting continuing education credits.*

a. A pharmacist shall provide or report to the board, in the format specified on or with the pharmacist license renewal application, evidence that the continuing education requirements have been met.

b. The board may require a pharmacist to submit activity statements of credit or other documented evidence of successful completion of the activities reported as fulfilling the continuing education requirements.

2.12(8) *Physical disability or illness.* The board may, in individual cases involving physical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application is made and signed by the licensee and the licensee's physician. The board may grant waivers of the minimum continuing education requirements for physical disability or illness for any period of time not to exceed one renewal period. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the licensee to make up all or any portion of the waived continuing education requirements by any method prescribed by the board.

[**ARC 8672B**, IAB 4/7/10, effective 5/12/10; **ARC 9406B**, IAB 3/9/11, effective 4/13/11; **ARC 9782B**, IAB 10/5/11, effective 11/9/11; **ARC 0595C**, IAB 2/6/13, effective 3/13/13]

657—2.13(272C) Active and inactive license status.

2.13(1) *Active license.* Active license status applies to a pharmacist who has submitted the renewal application and fee and has met Iowa requirements for continuing education or has completed a CPD portfolio pursuant to rule 657—2.17(272C). Active license status also applies to a pharmacist who has submitted the renewal application and fee and who is a resident of another state, is licensed to practice pharmacy in that state, and has met the continuing education requirements of that state. A pharmacist who meets the continuing education requirements of another state shall provide documentation on the renewal application of the pharmacist's license status in that state. An Iowa licensee actively practicing in a state that does not require continuing education for license renewal shall be required to meet Iowa continuing education or CPD requirements.

2.13(2) *Inactive license.* Failure of a pharmacist to comply with the continuing education or CPD requirements during the renewal period shall result in the issuance of a renewal card marked "inactive" upon submission of the renewal application and fee. Reactivation of an inactive pharmacist license shall be accomplished by the appropriate method described below. Internship, in each instance where internship is mentioned below, shall be in a pharmacy approved by the board. The pharmacist may be required to obtain a pharmacist-intern registration, including payment of the appropriate registration fee, and be issued an intern registration certificate.

a. An inactive pharmacist who wishes to become active and who has been actively practicing pharmacy during the last five years in any state or states which required continuing education during that five-year period shall submit proof of continued licensure in good standing in the state or states of such practice.

b. An inactive pharmacist who wishes to become active and who has been actively practicing pharmacy during the last five years in a state which does not require continuing education shall submit proof of continued licensure in good standing in the state or states of such practice. The pharmacist shall also complete one of the following options:

(1) Take and successfully pass the MPJE, Iowa Edition, as provided in subrule 2.1(1);

(2) Complete 160 hours of internship for each year the pharmacist was on inactive status (not to exceed 1,000 hours);

(3) Obtain one and one-half times the number of continuing education credits required under subrule 2.12(1) for each renewal period the pharmacist was inactive; or

(4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

c. An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy during the past five years, and whose license has been inactive for not more than five years, shall complete one of the following options:

(1) Successfully pass all components of the licensure examination as required in rule 657—2.1(147,155A);

(2) Complete 160 hours of internship for each year the pharmacist was on inactive status;

(3) Obtain one and one-half times the number of continuing education credits required under subrule 2.12(1) for each renewal period the pharmacist was inactive; or

(4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

d. An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy for more than five years shall petition the board for reactivation of the license to practice pharmacy under one or more of the following options:

(1) Successfully pass all components of the licensure examination as required in rule 657—2.1(147,155A);

(2) Complete 160 hours of internship for each year the pharmacist was on inactive status (not to exceed 1,000 hours);

(3) Obtain one and one-half times the number of continuing education credits required under subrule 2.12(1) for each renewal period the pharmacist was inactive; or

(4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

[**ARC 0595C**, IAB 2/6/13, effective 3/13/13]

657—2.14(155A) Fees for additional license certificates. Only original license certificates issued by the board of pharmacy for licensed pharmacists are valid. Additional original license certificates for licensed pharmacists may be obtained from the board of pharmacy for a prepaid fee of $20 each. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

657—2.15(155A) Notifications to the board. A pharmacist shall report to the board within ten days a change of the pharmacist's name, address, or pharmacy employment.

657—2.16(235B,272C) Mandatory training for identifying and reporting abuse. "Mandatory training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of a pharmacist who qualifies as a mandatory abuse reporter under Iowa Code section 232.69 or 235B.16. A licensed pharmacist shall be responsible for determining whether or not, by virtue of the pharmacist's practice or employment, the pharmacist qualifies as a mandatory abuse reporter under either or both of these sections.

2.16(1) *Training required.* A licensed pharmacist who qualifies as a mandatory abuse reporter shall have completed approved abuse education training as follows.

a. *Mandatory reporter of child abuse.* A pharmacist who qualifies as a mandatory reporter of child abuse shall have completed two hours of training in child abuse identification and reporting within the previous five years.

b. *Mandatory reporter of dependent adult abuse.* A pharmacist who qualifies as a mandatory reporter of dependent adult abuse shall have completed two hours of training in dependent adult abuse identification and reporting within the previous five years.

c. *Mandatory reporter of child abuse and dependent adult abuse.* A pharmacist who qualifies as a mandatory reporter of child abuse and dependent adult abuse may complete separate courses pursuant to paragraphs *"a"* and *"b"* or may complete, within the previous five years, one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

2.16(2) *Persons exempt from training requirements.* The requirements of this rule shall not apply to a pharmacist during periods that the pharmacist serves honorably on active duty in the military or during periods that the pharmacist resides outside Iowa and does not practice pharmacy in Iowa.

2.16(3) *Mandatory training records.* A pharmacist subject to the requirements of this rule shall maintain documentation of completion of the mandatory training for identifying and reporting abuse, including dates, subjects, duration of programs, and proof of participation, for five years following the date of the training. The board may audit this information at any time within the five-year period.

2.16(4) *Approved programs.* "Approved abuse education training" means a training program using a curriculum approved by the abuse education review panel of the Iowa department of public health.

657—2.17(272C) Continuing professional development portfolio. A pharmacist may complete and submit with the pharmacist's license renewal a continuing professional development (CPD) portfolio to fulfill the continuing education requirements in rule 657—2.12(272C). For purposes of these rules, "CPD" means a self-directed, ongoing, systematic, and outcomes-focused approach to learning and professional development including active participation in learning activities that assist a pharmacist in developing and maintaining continuing competence in the practice of pharmacy, enhancing the pharmacist's professional practice, and supporting achievement of the pharmacist's career goals. Definitions and descriptions of the terms "continuing education," "CEU," and "renewal period" included in rule 657—2.12(272C) shall apply to those terms as used in this rule.

2.17(1) *Declaration of intent.* A pharmacist shall declare on or with the previous license renewal, or shall notify the board no later than January 1 of the year the pharmacist's license is scheduled for renewal, of the pharmacist's intent to complete a CPD portfolio for the next license renewal.

a. The pharmacist's declaration of intent shall be in writing. Oral declaration of intent to complete a CPD portfolio will not be accepted.

b. A declaration of intent may be delivered to the board office via e-mail, facsimile transmission, or alternate hard-copy delivery.

2.17(2) *Prerequisite.* A pharmacist, prior to submitting the pharmacist's initial CPD portfolio, shall complete an ACPE-accredited provider activity regarding the objectives and processes relating to CPD. Record of the pharmacist's participation in this prerequisite activity shall be included in the pharmacist's initial CPD portfolio.

2.17(3) *CPD portfolio requirements.* A pharmacist shall combine traditional continuing education activities with professional development activities. The pharmacist shall incorporate the record of completion and evaluation of any traditional continuing education activities into the CPD portfolio.

a. The pharmacist is responsible for ensuring that the activity content identified in the CPD portfolio directly relates to the pharmacist's professional practice and career goals.

b. The pharmacist is responsible for ensuring that the activities identified in the CPD portfolio comply with the continuing education topic requirements identified in subrules 2.12(4) and 2.17(4).

2.17(4) *CPD portfolio content.* In addition to the record of completion of the one-time prerequisite activity identified in subrule 2.17(2), a completed CPD portfolio shall include or identify the following:

a. A minimum of 30 documented learning outcomes in the form of completed learning statements. The learning statement form or format shall be provided by the board.

b. Documented learning outcomes shall include a minimum of two outcomes relating to patient or medication safety, two outcomes relating to pharmacy law, and 15 outcomes relating to drug therapy.

c. Documented learning outcomes shall include any number of continuing education activities that carry the seal of an ACPE-accredited provider. Successful completion and record of these continuing education activities in CPE Monitor as provided in subrule 2.12(2), in addition to the documented CPD learning outcomes, is required for the pharmacist to receive credit for these activities.

d. Documented learning outcomes shall include any continuing education activities provided by non-ACPE, accredited, health-professional continuing education providers pursuant to subrule 2.12(2).

2.17(5) *CPD portfolio review.* The board shall review or may contract for peer review of CPD portfolios submitted for pharmacist license renewal. The board shall respond to a submitting pharmacist with comments, suggestions, and recommendations regarding the pharmacist's CPD portfolio and processes.

[**ARC 0595C**, IAB 2/6/13, effective 3/13/13]

These rules are intended to implement Iowa Code sections 147.10, 147.36, 147.94, 147.96, 155A.8, 155A.9, 155A.11, 155A.39, and 272C.2.

[Filed 4/11/68; amended 11/14/73]
[Filed 11/24/76, Notice 10/20/76—published 12/15/76, effective 1/19/77]
[Filed 1/30/80, Notice 12/26/79—published 2/20/80, effective 6/1/80]
[Filed 9/24/80, Notice 6/25/80—published 10/15/80, effective 11/19/80]
[Filed 12/1/80, Notice 9/3/80—published 12/24/80, effective 1/28/81]
[Filed 2/12/81, Notice 9/3/80—published 3/4/81, effective 4/8/81]
[Filed 6/16/83, Notice 5/11/83—published 7/6/83, effective 8/10/83]
[Filed 11/14/85, Notice 8/28/85—published 12/4/85, effective 1/8/86]
[Filed 5/14/86, Notice 4/9/86—published 6/4/86, effective 7/9/86]
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed 8/5/87, Notice 6/3/87—published 8/26/87, effective 9/30/87]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 4/26/88, Notice 3/9/88—published 5/18/88, effective 6/22/88]
[Filed 11/17/88, Notice 8/24/88—published 12/14/88, effective 1/18/89]
[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed 1/29/91, Notice 9/19/90—published 2/20/91, effective 3/27/91]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed 2/27/97, Notices 8/28/96, 1/1/97—published 3/26/97, effective 4/30/97]
[Filed 6/23/97, Notice 4/9/97—published 7/16/97, effective 8/20/97]
[Filed 11/19/97, Notice 10/8/97—published 12/17/97, effective 1/21/98]
[Filed 7/31/98, Notice 5/20/98—published 8/26/98, effective 10/15/98]
[Filed 9/8/99, Notice 6/2/99—published 10/6/99, effective 11/10/99]
[Filed 8/14/02, Notice 6/12/02—published 9/4/02, effective 10/9/02]
[Filed 7/15/03, Notice 4/16/03—published 8/6/03, effective 9/10/03]
[Filed emergency 7/16/04 after Notice 6/9/04—published 8/4/04, effective 7/16/04]
[Filed emergency 6/30/05 after Notice 5/11/05—published 7/20/05, effective 7/1/05]
[Filed 3/22/06, Notice 1/18/06—published 4/12/06, effective 5/17/06]
[Filed 5/17/06, Notice 4/12/06—published 6/7/06, effective 7/12/06]
[Filed 2/7/07, Notice 10/25/06—published 2/28/07, effective 4/4/07]

[Filed emergency 11/13/07 after Notice 8/29/07—published 12/5/07, effective 11/13/07]
[Filed 11/24/08, Notice 10/8/08—published 12/17/08, effective 1/21/09]
[Filed ARC 8672B (Notice ARC 8412B, IAB 12/30/09), IAB 4/7/10, effective 5/12/10]
[Filed ARC 9406B (Notice ARC 9192B, IAB 11/3/10), IAB 3/9/11, effective 4/13/11]
[Filed ARC 9782B (Notice ARC 9554B, IAB 6/15/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0504C (Notice ARC 0351C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]
[Filed ARC 0595C (Notice ARC 0511C, IAB 12/12/12), IAB 2/6/13, effective 3/13/13]
[Filed ARC 1031C (Notice ARC 0884C, IAB 7/24/13), IAB 9/18/13, effective 10/23/13]
[Filed ARC 3099C (Notice ARC 2859C, IAB 12/7/16), IAB 6/7/17, effective 7/12/17]
[Filed ARC 3636C (Notice ARC 3369C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 5
PHARMACY SUPPORT PERSONS

657—5.1(155A) Definitions. For purposes of this chapter, the following definitions shall apply:

"Board" means the Iowa board of pharmacy.

"Delivery" means the transport and conveyance of a finished, securely packaged prescription order to the patient or the patient's agent.

"Direct access" means physical access, without direct supervision by a pharmacist, to opened, unpackaged, or unsecured stock containers or prescription vials containing prescription drugs.

"Pharmacy clerk" means a person whose duties within the pharmacy department include accessing filled prescription orders and processing payments for and delivering such orders to the patient or the patient's agent under the supervision of a pharmacist.

"Pharmacy support person" means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by a supervising pharmacist under the pharmacist's responsibility and supervision.

"Pharmacy technician" or *"technician"* means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, and who is registered pursuant to 657—Chapter 3, and includes a certified pharmacy technician, a pharmacy technician trainee, and an uncertified pharmacy technician.

"Secure package" means the prescription order is enclosed in tamper-evident packaging. An IV bag is considered tamper-evident packaging.

"Supervising pharmacist" means an Iowa-licensed pharmacist who is on duty in an Iowa-licensed pharmacy and who is responsible for assigning and supervising the duties performed by a pharmacy support person.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—5.2(155A) Purpose of registration. A registration program for pharmacy support persons is established for the purposes of identification, tracking, and disciplinary action. The registration shall not include any determination of the competency of the registered individual. The use of pharmacy support persons to assist the pharmacist with nontechnical duties associated with the practice of pharmacy enables the pharmacist to provide pharmaceutical care to the patient.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.3 Reserved.

657—5.4(155A) Registration required.

5.4(1) *Effective date.* Beginning June 1, 2010, a pharmacy support person shall register with the board pursuant to the requirements of this chapter.

5.4(2) *Registration number.* Each pharmacy support person registered with the board will be assigned a unique registration number.

5.4(3) *Original application required.* Any person required to register and not previously registered with the board as a pharmacy support person shall complete an application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy support person. Such application shall be received in the board office before the expiration of this 30-day period.

5.4(4) *Employment terminated.* A registered pharmacy support person who discontinues employment as a pharmacy support person shall not be required to maintain a registration and shall request cancellation of the registration as provided in rule 657—5.14(155A).

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.5(155A) Exempt from registration. Unless a person has direct access to prescription drugs, the following shall be exempt from registration as a pharmacy support person:

1. Delivery person.
2. Billing clerk, including a person who processes claims for third-party payments.

3. Data processing support, maintenance, or programming personnel.

4. Facility maintenance personnel including but not necessarily limited to cleaning, sanitation, structural, and mechanical maintenance personnel. Facility maintenance personnel deemed exempt from registration shall be directly supervised by a pharmacist or a certified pharmacy technician who is responsible for the maintenance person's activities within the pharmacy department to ensure medication security and patient privacy.

5. Any person not directly employed by or under contract to the pharmacy, and not under the direct supervision of a pharmacist, who provides data processing, billing, maintenance, or administrative support functions outside the pharmacy department.

6. A registered pharmacist-intern or a registered pharmacy technician.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.6 Reserved.

657—5.7(155A) Registration application form.

5.7(1) *Required information.* The application form for a pharmacy support person registration shall require the following:

a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;

b. Educational background;

c. Work experience;

d. Current place or places of employment;

e. Any other information deemed necessary by the board.

5.7(2) *Declaration of current impairment or limitations.* The applicant shall declare any current use of drugs, alcohol, or other chemical substances that in any way impairs or limits the applicant's ability to perform the duties of a pharmacy support person with reasonable skill and safety.

5.7(3) *History of felony or misdemeanor crimes.* The applicant shall declare any history of being charged, convicted, found guilty of, or entering a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under $100).

5.7(4) *History of disciplinary actions.* The applicant shall declare any history of disciplinary actions or practice restrictions imposed by a state health care professional, licensure, or registration authority.

5.7(5) *Sworn signature.* The applicant shall sign the application under penalty of perjury and shall submit the application to the board with the appropriate fees pursuant to rules 657—5.9(155A) and 657—5.11(155A).

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.8 Reserved.

657—5.9(155A) Registration fee.

5.9(1) *Initial fee.* The fee for obtaining an initial registration shall be $25.

5.9(2) *Renewal fee.* The renewal fee for obtaining a biennial registration shall be $25.

5.9(3) *Timeliness.* Fees shall be paid at the time the new application or the renewal application is submitted for filing.

5.9(4) *Form of payment.* Fee payment shall be in the form of a personal check, certified or cashier's check, or money order payable to Iowa Board of Pharmacy.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—5.10(155A) Registration renewal. A pharmacy support person registration shall expire on the second last day of the birth month following initial registration. Registration shall not require continuing education for renewal.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.11(155A) Late application.

5.11(1) *Fee.* A person required to register or to renew the person's registration who files a late application shall pay an additional $25 late payment fee.

5.11(2) *Timeliness of initial application.* An application for initial registration shall be assessed a late payment fee if not received within the applicable period specified in rule 657—5.4(155A).

5.11(3) *Timeliness of renewal application.* An application for registration renewal shall be assessed a late payment fee if not received by the expiration date of the registration. A late payment fee shall not be assessed on an expired registration if the person was not employed as a pharmacy support person during the period following expiration of the registration.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—5.12 Reserved.

657—5.13(155A) Registration certificates. The original registration certificate issued by the board to a pharmacy support person shall be maintained by the pharmacy support person. Verification of current registration shall be maintained in each pharmacy where the pharmacy support person is employed in that capacity and shall be available for inspection by the board.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.14(155A) Notifications to the board. A pharmacy support person shall report to the board within ten days a change of name, address, place of employment, or employment status.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.15(155A) Identification of pharmacy support person.

5.15(1) *Name badge.* A pharmacy support person shall wear a name badge or other form of identification while on duty which clearly identifies the person as a pharmacy support person.

5.15(2) *Misrepresentation prohibited.* A pharmacy support person shall not, in any manner, represent himself or herself as a pharmacist, a pharmacist-intern, or a pharmacy technician.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.16 Reserved.

657—5.17(155A) Tasks a pharmacy support person shall not perform. A pharmacy support person shall not perform any of the following judgmental or technical functions. Performance of any of these tasks by a pharmacy support person shall constitute the practice of pharmacy without a license in violation of Iowa Code section 155A.7. A pharmacy support person shall not:

1. Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

2. Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A).

3. Provide patient counseling, consultation, or patient-specific drug information; make an offer of patient counseling on behalf of the pharmacist; or accept a refusal of patient counseling from a patient or patient's agent.

4. Make decisions that require a pharmacist's professional judgment, such as interpreting or applying information.

5. Accept by oral communication any new or refill prescription authorizations communicated to a pharmacy by a prescriber or by the prescriber's office or contact a prescriber to obtain prescription refill authorizations.

6. Provide a prescription or drug to a patient without a pharmacist's verification as to the accuracy of the dispensed medication and without the physical presence of a pharmacist.

7. Package, pour, or place in a container for dispensing, sale, distribution, transfer, vending, or barter any drug which, under federal or state laws, may be sold or dispensed only pursuant to the prescription of a practitioner authorized to prescribe drugs. This prohibited task includes the addition of water or other liquid for reconstitution of oral antibiotic liquids. A pharmacy support person may place

a prescription container into a bag or sack for delivery to the patient as part of the sales transaction after the accuracy of the prescription has been verified by the pharmacist.

8. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

9. Process or enter pertinent patient or prescription information, including entry of that information into the pharmacy computer system, except as provided in rule 657—5.18(155A).

10. Prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart fills for hospital or long-term care facility patients.

11. Check or inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital nursing unit, or a hospice facility.

12. Reconstitute prefabricated noninjectable medication, prepare parenteral products, or compound sterile or nonsterile drug products.

13. Communicate, transmit, or receive patient or prescription information to or from the pharmacy for the purpose of transferring a patient's prescription between pharmacies.

14. Assist with or witness the destruction or wastage of controlled substances pursuant to 657—subrule 10.22(2).

15. Perform any of the duties identified in 657—Chapter 3 as technical functions that may be delegated to a pharmacy technician.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9785B**, IAB 10/5/11, effective 11/9/11; **ARC 3637C**, IAB 2/14/18, effective 3/21/18]

657—5.18(155A) Nontechnical pharmacy support tasks. An appropriately trained and registered pharmacy support person may perform any of the following nontechnical functions that have been delegated to the pharmacy support person by the supervising pharmacist:

1. Perform the duties of a pharmacy clerk. The duties of a pharmacy clerk may include placing a prescription container into a bag or sack for delivery to the patient as part of the sales transaction after the accuracy of the prescription has been verified by the pharmacist.

2. Process wholesale drug orders, including the submission of orders, the receipt and processing of drug deliveries from drug wholesalers, reconciling products received with packing slips or invoices, and affixing appropriate inventory or price stickers to drug stock bottles or containers.

3. Perform routine clerical duties, such as filing processed, hard-copy prescriptions and other pharmacy records.

4. Update or change patient demographic information, excluding allergies and disease state information, in the pharmacy computer system or patient profile.

5. Receive from a patient the patient's request for a prescription refill, excluding the processing of the refill request.

6. Perform pharmacy drug inventory control duties, including checking pharmacy stock shelves for outdated drugs and assisting with annual inventory counts.

7. Deliver drugs to patient care areas, long-term care facilities, patient residences, or patient employment locations, excluding the restocking of automated medication distribution system components.

8. Perform any routine clerical or pharmacy support function not prohibited in rule 657—5.17(155A).

9. In nuclear pharmacy practice, perform nonjudgmental tasks under the direct supervision of a nuclear pharmacist pursuant to 657—Chapter 16.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9785B**, IAB 10/5/11, effective 11/9/11]

657—5.19 Reserved.

657—5.20(155A) Training and utilization of pharmacy support persons. All Iowa-licensed pharmacies utilizing pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy support persons. Pharmacy

policies shall specify the frequency of review. Pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Such policies and procedures and documentation of pharmacy support person training shall be available for inspection by the board or an agent of the board.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.21(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy support person working under a supervising pharmacist shall remain with the supervising pharmacist.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.22(155A) Delegation of nontechnical functions. A pharmacist may delegate nontechnical functions to an appropriately trained and registered pharmacy support person, but only if the pharmacist is present to supervise the pharmacy support person when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.23 Reserved.

657—5.24(155A) Denial of registration. The board may deny an application for registration as a pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.25(147,155A) Unethical conduct or practice. Violation by a pharmacy support person of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—5.26(155A).

5.25(1) *Misrepresentative deeds.* A pharmacy support person shall not make any statement tending to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

5.25(2) *Confidentiality.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacy support person shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber.

5.25(3) *Discrimination.* It is unethical for a pharmacy support person to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, sexual orientation, gender identity, age, national origin, or disease state when providing pharmaceutical services.

5.25(4) *Unethical conduct or behavior.* A pharmacy support person shall not exhibit unethical behavior in connection with the pharmacy support person's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—5.26(155A) Discipline of pharmacy support persons.

5.26(1) *Violations.* The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

5.26(2) *Sanctions.* The board may impose the following disciplinary sanctions:

a. Revocation of a pharmacy support person registration.

b. Suspension of a pharmacy support person registration until further order of the board or for a specified period.

c. Nonrenewal of a pharmacy support person registration.

d. Prohibition, permanently, until further order of the board, or for a specified period, from engaging in specified procedures, methods, or acts.

e. Probation.

f. Imposition of civil penalties not to exceed $25,000.

g. Issuance of citation and warning.

h. Such other sanctions allowed by law as may be appropriate.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

These rules are intended to implement Iowa Code sections 147.55, 155A.3, 155A.18 and 155A.23 and 2009 Iowa Code Supplement section 155A.6B.

[Filed ARC 8673B (Notice ARC 8380B, IAB 12/16/09), IAB 4/7/10, effective 6/1/10]

[Filed Emergency ARC 9009B, IAB 8/11/10, effective 7/23/10]

[Filed ARC 9785B (Notice ARC 9556B, IAB 6/15/11), IAB 10/5/11, effective 11/9/11]

[Filed ARC 0504C (Notice ARC 0351C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[Filed ARC 3637C (Notice ARC 3370C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 6
GENERAL PHARMACY PRACTICE

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

657—6.1(155A) Purpose and scope. A general pharmacy is a location where a pharmacist provides pharmaceutical services or dispenses pharmaceutical products to patients in accordance with pharmacy laws. This chapter does not apply to a hospital pharmacy as defined in 657—Chapter 7. The requirements of these rules for general pharmacy practice are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.

657—6.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the responsibilities identified in rule 657—8.3(155A).

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 0501C**, IAB 12/12/12, effective 1/16/13; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, at a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. A reference including all pertinent Iowa laws, rules, and regulations that impact the pharmacy's practice.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. A reference on natural or herbal medicines.
7. The readily accessible telephone number of a poison control center that serves the area.
8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[**ARC 2196C**, IAB 10/14/15, effective 11/18/15]

657—6.4(155A) Exemption from duplicate requirements. A pharmacy established in the same location as another licensed pharmacy and with direct and immediate access to required references, patient counseling area, refrigerator, or sink with hot and cold running water may utilize the references, counseling area, refrigerator, or sink of the other pharmacy to satisfy the requirements of rule 657—6.3(155A), subrule 6.14(3), or rule 657—8.5(155A), paragraphs "1" and "2."

657—6.5 and **6.6** Reserved.

657—6.7(124,155A) Security. While on duty, each pharmacist shall be responsible for the security of the prescription department and of the provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs, including those collected through an authorized collection program, records for such drugs and authorized collection program activities, and patient records as provided in 657—Chapters 10 and 21 and federal regulations for authorized controlled substance collection programs, which can be found at deadiversion.usdoj.gov/drug_disposal/.

6.7(1) *Department locked.* The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.7(2).

6.7(2) *Temporary absence of pharmacist.* In the temporary absence of the pharmacist, only the pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

a. In the absence of the pharmacist, the pharmacy shall be secured from public access and the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, the pharmacy technician or the pharmacy support person may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

b. A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated, and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge, and documentation of such review shall be maintained for two years from the date of entry.

6.7(3) *Activities prohibited in absence of pharmacist.* Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

a. Dispensing or distributing any prescription drugs or devices to patients or others.

b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

c. Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

d. Providing patient counseling, consultation, or drug information.

e. Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

f. Transferring prescriptions to or from other pharmacies.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 1308C**, IAB 2/5/14, effective 3/12/14; **ARC 2408C**, IAB 2/17/16, effective 3/23/16; **ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.8(124,155A) Prescription processing documentation. All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription, except as provided in 657—subrule 21.5(1). The original prescription shall be retained by the pharmacy filling the prescription and shall be maintained in the original format as received by the pharmacy. Dispensing documentation shall include the date of fill or refill; the name, strength, and National Drug Code (NDC) of the actual drug product dispensed; and the initials or other unique identification of the pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program. Dispensing documentation shall be maintained and be readily available.

[**ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.9(124,155A) Transfer of prescription. The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient's caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient's caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

6.9(1) *Schedule III, IV, or V prescriptions.* The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis except as provided in subrule 6.9(8).

6.9(2) *Noncontrolled substances prescriptions.* The transfer of original prescription drug order information for noncontrolled prescription drugs between pharmacies is permissible as long as the number of transfers does not exceed the number of originally authorized refills and the original prescription is still valid.

6.9(3) *Communication.* The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies,

directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule 6.9(8). Following direct communication between authorized individuals as provided herein, the transferring pharmacist or pharmacist-intern may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via facsimile. The receiving pharmacist or pharmacist-intern shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule 6.9(7).

6.9(4) *Prescriptions maintained.* Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last activity.

6.9(5) *Record of transfer out.* The pharmacist or pharmacist-intern transferring the prescription drug order information shall:

a. Invalidate the prescription drug order;

b. Record on or with the invalidated prescription drug order the following information:

(1) The name, address, and, for a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(2) The name of the pharmacist or pharmacist-intern receiving the prescription drug order information;

(3) The name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and

(4) The date of the transfer.

6.9(6) *Original prescription status.* The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

6.9(7) *Record of transfer received.* The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

a. Indicate that the prescription drug order has been transferred;

b. Record on or with the transferred prescription drug order the following information:

(1) Original date of issuance and date of dispensing, if different from date of issuance;

(2) Original prescription number;

(3) Number of valid refills remaining, the date of last refill, and, for a controlled substance, the dates and locations of all previous refills;

(4) Name, address, and, for a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred;

(5) The date of the transfer;

(6) Name of the pharmacist or pharmacist-intern receiving the prescription drug order information;

(7) Name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and

(8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule 6.9(8) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

6.9(8) *Electronic transfer between pharmacies.* Pharmacies electronically accessing the same prescription drug order records via a real-time, online database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

a. The data processing system shall have a mechanism to send the transferring pharmacy a message containing the following information:

(1) The fact that the prescription drug order was transferred;

(2) The unique identification number of the prescription drug order transferred;

(3) The name, address, and DEA registration number of the pharmacy to which the prescription drug order was transferred and the name of the pharmacist or pharmacist-intern receiving the prescription information; and

(4) The date and time of transfer.

b. A pharmacist or pharmacist-intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message, or by a notation in the electronic message that includes the unique identification of the pharmacist or pharmacist-intern and the date of review, as soon as practical, but in no event more than 72 hours from the time of such transfer.

c. For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through 6.9(7) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

[**ARC 7634B**, IAB 3/11/09, effective 4/15/09; **ARC 8169B**, IAB 9/23/09, effective 10/28/09; **ARC 0343C**, IAB 10/3/12, effective 11/7/12; **ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.10(126,155A) Prescription label requirements.

6.10(1) *Required information.* The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name, telephone number, and address of the pharmacy;

c. Except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors or 657—subrule 8.19(8) for opioid antagonists, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the prescription is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as "(generic name) Generic for (brand name product)";

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as "(brand name product) for (generic name)";

(3) If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the prescription container label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as "(interchangeable biological product) for (biological product)";

h. The initials or other unique identification of the dispensing pharmacist.

6.10(2) *Exceptions.* The requirements of subrule 6.10(1) do not apply to unit dose dispensing systems, 657—22.1(155A), and patient med paks, 657—22.5(126,155A).

[**ARC 2194C**, IAB 10/14/15, effective 11/18/15; **ARC 2414C**, IAB 2/17/16, effective 3/23/16; **ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.11 and **6.12** Reserved.

657—6.13(155A) Patient record system.

6.13(1) *Information required.* A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall contain, at a minimum, the following information:

a. Full name of the patient;

b. Address and telephone number of the patient;

c. Patient's date of birth;

d. Patient's gender;

e. Known allergies;

f. A list of all prescription drug orders dispensed by the pharmacy during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date dispensed, and the name of the prescriber; and

g. Pharmacist comments relevant to the patient's health care, including:

(1) Known drug reactions,

(2) Identified idiosyncrasies,

(3) Known chronic conditions or disease states of the patient,

(4) The identity of any other drugs, over-the-counter drugs, herbals, supplements, other alternative medications, or devices currently being used by the patient that may relate to prospective drug review.

6.13(2) *Record retained.* A patient record shall be maintained for a period of not less than two years from the date of the last entry in the patient record. This record may be a hard copy or a computerized form.

6.13(3) *Confidential.* Information in the patient record shall be deemed to be confidential and may be released only as provided in rule 657—8.16(124,155A).

[**ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.14(155A) Patient counseling and instruction. Every pharmacy that is open to the public and located in Iowa shall post in every prescription pickup area, including in every drive-through prescription pickup lane, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any prescriptions dispensed to the patient that are new or a change in drug therapy.

6.14(1) *Counseling required.* Upon receipt of a new prescription drug order, or upon receipt of a change in drug therapy including but not limited to a change of dose, directions, or drug formulation, and following a prospective drug use review pursuant to rule 657—8.21(155A), a pharmacist or pharmacist-intern shall counsel each patient or patient's caregiver. An offer to counsel shall not fulfill the requirements of this rule. Patient counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

a. The name and description of the drug;

b. The dosage form, dose, route of administration, and duration of drug therapy;

c. Intended use of the drug, if known, and expected action;

d. Special directions and precautions for preparation, administration, and use by the patient;

e. Common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

f. Techniques for self-monitoring drug therapy;

g. Proper storage;

h. Prescription refill information;

i. Action to be taken in the event of a missed dose;

j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

6.14(2) *Instruction.* A pharmacist may instruct patients and demonstrate procedures for self-monitoring of medical conditions and for self-administration of drugs.

6.14(3) *Counseling area.* A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

a. Be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

6.14(4) *Oral counseling not practicable.* If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may select and use alternative forms of patient information

which shall include information for the patient or patient's caregiver to contact the pharmacist for further consultation. The manner in which the patient or caregiver contacts the pharmacist shall not cause the patient to incur any expense. "Not practicable" refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. "Not practicable" does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. A combination of oral counseling and alternative forms of counseling is encouraged.

6.14(5) *Exception.* Patient counseling, as described above, shall not be required for inpatients of an institution where other licensed health care professionals are authorized to administer the drugs.

6.14(6) *Refusal of consultation.* A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient's or caregiver's refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's attempt to counsel shall be presumed to signify that counseling was provided.

[**ARC 8540B**, IAB 2/24/10, effective 4/1/10; **ARC 9910B**, IAB 12/14/11, effective 1/18/12; **ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.15(124,126) Return of drugs and devices. For the protection of the public health and safety, prescription drugs and devices may be returned to the pharmacy for reuse or resale only as herein provided:

6.15(1) *Integrity maintained.* Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug or device has not in any way been compromised.

6.15(2) *Controlled substances.* Under no circumstances shall pharmacy personnel accept from a patient or a patient's agent any controlled substances for return, exchange, or resale except to the same patient.

6.15(3) *Unit dose returns.* Prescription drugs dispensed in unit dose packaging, excluding controlled substances, may be returned and reused as authorized in 657—subrule 22.1(6).

[**ARC 3638C**, IAB 2/14/18, effective 3/21/18]

657—6.16(124,155A) Records. Every record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record or last activity except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10.

6.16(1) *Combined records.* If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner made readily identifiable from all other items appearing on the records.

6.16(2) *Storage of records.* Original hard-copy prescriptions and other pharmacy records shall be maintained by the pharmacy for a minimum of two years from the date of the record in accordance with this subrule.

a. Records shall be maintained within the licensed pharmacy department for a minimum of 12 months, except as provided herein. Pharmacy records less than 12 months old may be stored in a secure storage area outside the licensed pharmacy department, including at a remote location, if the pharmacy has retained an electronic copy of the records in the pharmacy that is immediately available and if the original records are available within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

b. Records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department, including at a remote location, if the records are retrievable within 48 hours of a request by the board or its authorized agent, unless such remote storage is prohibited under federal law.

6.16(3) *Number imprinted.* The original hard-copy prescription shall be imprinted with the prescription or control number assigned to the prescription drug order, except as provided in 657—subrule 21.5(1).

6.16(4) *Alternative data retention system.* Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record;

b. The data processing system is capable of producing a hard copy of the record, within two business days, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies; and

c. The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original record.

[**ARC 7636B**, IAB 3/11/09, effective 4/15/09; **ARC 8539B**, IAB 2/24/10, effective 4/1/10; **ARC 3638C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

[Filed 5/16/67; amended 11/14/73]
[Filed 6/1/84, Notice 3/14/84—published 6/20/84, effective 7/25/84]
[Filed 5/14/86, Notice 4/9/86—published 6/4/86, effective 7/9/86]
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed 11/25/87, Notice 10/7/87—published 12/16/87, effective 1/20/88]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 11/17/88, Notice 8/24/88—published 12/14/88, effective 1/18/89]
[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed 9/12/89, Notice 6/14/89—published 10/4/89, effective 11/8/89]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed 7/30/91, Notice 5/29/91—published 8/21/91, effective 9/25/91]
[Filed 9/23/93, Notice 5/26/93—published 10/13/93, effective 11/17/93]
[Filed 3/21/94, Notice 10/13/93—published 4/13/94, effective 5/18/94]
[Filed 2/27/97, Notice 1/1/97—published 3/26/97, effective 4/30/97]
[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 4/24/98, Notice 3/11/98—published 5/20/98, effective 6/24/98]
[Filed 2/22/99, Notices 10/21/98—published 3/10/99, effective 4/14/99]◊
[Filed 4/22/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]
[Filed 9/8/99, Notice 6/2/99—published 10/6/99, effective 11/10/99]
[Filed 2/7/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 8/14/02, Notice 6/12/02—published 9/4/02, effective 10/9/02]
[Filed emergency 3/26/03 after Notice 11/13/02—published 4/16/03, effective 3/26/03]
[Filed 7/15/03, Notice 4/16/03—published 8/6/03, effective 9/10/03]
[Filed 10/22/04, Notice 3/31/04—published 11/10/04, effective 12/15/04]
[Filed 6/2/05, Notice 1/19/05—published 6/22/05, effective 7/27/05]
[Filed 6/2/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]
[Filed 3/22/06, Notice 12/21/05—published 4/12/06, effective 5/17/06]
[Filed 3/22/06, Notice 1/18/06—published 4/12/06, effective 5/17/06]
[Filed 2/7/07, Notice 10/25/06—published 2/28/07, effective 4/4/07]
[Filed 8/2/07, Notice 6/20/07—published 8/29/07, effective 10/3/07]
[Filed 3/5/08, Notice 12/5/07—published 3/26/08, effective 4/30/08]
[Filed 11/24/08, Notice 10/8/08—published 12/17/08, effective 1/21/09]
[Filed ARC 7634B (Notice ARC 7447B, IAB 12/31/08), IAB 3/11/09, effective 4/15/09]
[Filed ARC 7636B (Notice ARC 7448B, IAB 12/31/08), IAB 3/11/09, effective 4/15/09]
[Filed ARC 8169B (Notice ARC 7926B, IAB 7/1/09), IAB 9/23/09, effective 10/28/09]
[Filed ARC 8540B (Notice ARC 8267B, IAB 11/4/09), IAB 2/24/10, effective 4/1/10]
[Filed ARC 8539B (Notice ARC 8269B, IAB 11/4/09), IAB 2/24/10, effective 4/1/10]
[Filed ARC 8673B (Notice ARC 8380B, IAB 12/16/09), IAB 4/7/10, effective 6/1/10]

[Filed ARC 9910B (Notice ARC 9787B, IAB 10/5/11), IAB 12/14/11, effective 1/18/12]
[Filed ARC 0343C (Notice ARC 0155C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 0501C (Notice ARC 0375C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]
[Filed ARC 1308C (Notice ARC 1040C, IAB 10/2/13), IAB 2/5/14, effective 3/12/14]
[Filed ARC 1961C (Notice ARC 1793C, IAB 12/10/14), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2194C (Notice ARC 1979C, IAB 4/29/15), IAB 10/14/15, effective 11/18/15]
[Filed ARC 2196C (Notice ARC 2065C, IAB 7/22/15), IAB 10/14/15, effective 11/18/15]
[Filed ARC 2408C (Notice ARC 2285C, IAB 12/9/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2414C (Notice ARC 2288C, IAB 12/9/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 3638C (Notice ARC 3330C, IAB 9/27/17), IAB 2/14/18, effective 3/21/18]

◊ Two or more ARCs

CHAPTER 8
UNIVERSAL PRACTICE STANDARDS
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 6]

657—8.1(155A) Purpose and scope. The requirements of these rules apply to all Iowa-licensed pharmacists and to all pharmacies providing the services addressed in this chapter to patients in Iowa and are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board.

657—8.2(155A) Pharmaceutical care. Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescribing practitioner.

8.2(1) *Drug therapy problems.* In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

8.2(2) *Drug therapy plan.* In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the plan as appropriate.

8.2(3) *Eligibility.* Any Iowa-licensed pharmacist may practice pharmaceutical care.

657—8.3(155A) Responsible parties.

8.3(1) *Pharmacist in charge.* One professionally competent, legally qualified pharmacist in charge in each pharmacy shall work cooperatively with the pharmacy, by and through its owner or license holder, and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge.

8.3(2) *Pharmacy.* Each pharmacy, by and through its owner or license holder, shall work cooperatively with the pharmacist in charge and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. The pharmacy, by and through its owner or license holder, shall be responsible for employing a professionally competent, legally qualified pharmacist in charge.

8.3(3) *Pharmacy and pharmacist in charge.* The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share responsibility for, at a minimum, the following:

a. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.

b. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.

c. Ensuring that there is adequate space within the prescription department or a locked room not accessible to the public for the storage of prescription drugs, including controlled substances, devices, and pharmacy records, and to support the operations of the pharmacy.

8.3(4) *Pharmacist in charge and staff pharmacists.* The pharmacist in charge and staff pharmacists shall share responsibility for, at a minimum, the following:

a. Ensuring that a pharmacist performs prospective drug use review as specified in rule 657—8.21(155A).

b. Ensuring that a pharmacist provides patient counseling as specified in rule 657—6.14(155A).

c. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.

d. Delivering drugs to the patient or the patient's agent.

e. Ensuring that patient medication records are maintained as specified in rule 657—6.13(155A).

f. Training and supervising pharmacist-interns, pharmacy technicians, pharmacy support persons, and other pharmacy employees.

g. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.

h. Distributing and disposing of drugs from the pharmacy.

i. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.

j. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

8.3(5) *Pharmacy, pharmacist in charge, and staff pharmacists.* The pharmacy, by and through its owner or license holder, the pharmacist in charge, and all staff pharmacists shall share responsibility for, at a minimum, the following:

a. Establishing and periodically reviewing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and complying (by the pharmacist in charge and staff pharmacists) with policies and procedures for all operations of the pharmacy. The policies and procedures shall identify the frequency of review.

b. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, including controlled substances, and records for such drugs.

c. Establishing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and utilizing (by the pharmacist in charge and staff pharmacists) an ongoing, systematic program of continuous quality improvement for achieving performance enhancement and ensuring the quality of pharmaceutical services.

8.3(6) *Practice functions.* The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and pharmacy support persons.

8.3(7) *Pharmacist-documented verification.* The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 1576C**, IAB 8/20/14, effective 9/24/14; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—8.4(155A) Pharmacist identification and staff logs.

8.4(1) *Display of pharmacist license.* During any period the pharmacist is working in a pharmacy, each pharmacist shall display, in a position visible to the public, an original license to practice pharmacy. A current license renewal certificate, which may be a photocopy of an original renewal certificate, shall be displayed with the original license.

8.4(2) *Identification codes.* A permanent log of the initials or identification codes identifying by name each dispensing pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person can be identified.

8.4(3) *Temporary or intermittent pharmacy staff.* The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, pharmacy technicians, and pharmacy support persons who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy

support person and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

8.4(4) *Identification badge.* A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9409B**, IAB 3/9/11, effective 4/13/11]

657—8.5(155A) Environment and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy pursuant to rule 657—8.3(155A). Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

8.5(1) *Refrigeration.* The pharmacy shall maintain one or more refrigeration units. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration, and a thermometer shall be maintained in the refrigerator to verify the temperature.

8.5(2) *Sink.* The pharmacy shall have a sink with hot and cold running water located within the pharmacy department and available to all pharmacy personnel; the sink shall be maintained in a sanitary condition.

8.5(3) *Secure barrier.* A pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A). To ensure that secure closure, the pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval at least 30 days prior to the start of construction. The pharmacy may be subject to inspection as provided in subrule 8.5(4).

8.5(4) *Remodel or relocation—inspection.* A pharmacy planning to remodel or relocate a licensed pharmacy department on or within the premises currently occupied by the pharmacy department, or a pharmacy intending to remodel or install a sterile compounding facility or equipment, shall provide written notification to the board at least 30 days prior to commencement of the remodel, pharmacy relocation, or sterile compounding installation. The board may require on-site inspection of the facility, equipment, or pharmacy department prior to or during the pharmacy's remodel, relocation, or opening. The board may also require on-site inspection of a temporary pharmacy location intended to be utilized during the remodel, construction, or relocation of the pharmacy department.

8.5(5) *Orderly and clean.* The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner. Animals shall not be allowed within a licensed pharmacy unless that pharmacy is exclusively providing services for the treatment of animals or unless the animal is a service dog or assistive animal as defined in Iowa Code subsection 216C.11(1).

8.5(6) *Light, ventilation, temperature, and humidity.* The pharmacy shall be properly lighted and ventilated. The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

8.5(7) *Other equipment.* The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share the responsibility for ensuring the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

8.5(8) *Bulk counting machines.* Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. Established policies and procedures

shall include a method to calibrate and verify the accuracy of the counting device. The pharmacy shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

8.5(9) *Authorized collection program.* A pharmacy that is registered with the United States Department of Justice, Drug Enforcement Administration, to administer an authorized collection program shall provide adequate space, equipment, and supplies for such collection program pursuant to 657—Chapter 10 and federal regulations for authorized collection programs, which can be found at deadiversion.usdoj.gov/drug_disposal/.

[**ARC 8671B**, IAB 4/7/10, effective 5/12/10; **ARC 0503C**, IAB 12/12/12, effective 1/16/13; **ARC 1961C**, IAB 4/15/15, effective 5/20/15; **ARC 2408C**, IAB 2/17/16, effective 3/23/16]

657—8.6(155A) Health of personnel. Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug dispensing, preparation, compounding, or storage areas. Any person shown, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the quality or safety of a drug product or another individual shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, drug products, and patients until the condition is corrected or determined by competent medical personnel not to jeopardize the quality or safety of drug products or patients. All personnel who normally assist the pharmacist shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

657—8.7(155A) Procurement, storage, and recall of drugs and devices.

8.7(1) *Source.* Procurement of prescription drugs and devices shall be from a drug wholesaler licensed by the board to distribute to Iowa pharmacies or, on a limited basis, from another licensed pharmacy or licensed practitioner located in the United States.

8.7(2) *Sufficient stock.* A pharmacy shall maintain sufficient stock of drugs and devices to fulfill the foreseeable needs of the patients served by the pharmacy.

8.7(3) *Manner of storage.* Drugs and devices shall be stored in a manner to protect their identity and integrity.

8.7(4) *Storage temperatures.* All drugs and devices shall be stored at the proper temperature, as defined by the following terms:

a. *"Controlled room temperature"* means temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. *"Cool"* means temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). Drugs and devices may be stored in a refrigerator unless otherwise specified on the labeling;

c. *"Refrigerate"* means temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

d. *"Freeze"* means temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

8.7(5) *Product recall.* There shall be a system for removing from use, including unit dose, any drugs and devices subjected to a product recall.

657—8.8(124,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be dispensed for use beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are properly disposed of.

657—8.9(124,155A) Records. Every inventory or other record required to be maintained by a pharmacy pursuant to board rules or Iowa Code chapters 124 and 155A shall be maintained and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular record or inventory. Original hard-copy prescription and other pharmacy records more than 12 months old may

be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department. The following records shall be maintained for at least two years.

8.9(1) *Drug supplier invoices.* All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the controlled substances by the pharmacist or other responsible individual is clearly recorded.

8.9(2) *Drug supplier credits.* All pharmacies shall maintain supplier credit memos for controlled substances and prescription drugs.

[**ARC 8539B**, IAB 2/24/10, effective 4/1/10]

657—8.10 Reserved.

657—8.11(147,155A) Unethical conduct or practice. The provisions of this rule apply to licensed pharmacies, licensed pharmacists, registered pharmacy technicians, registered pharmacy support persons, and registered pharmacist-interns.

8.11(1) *Misrepresentative deeds.* A pharmacist, technician, support person, or pharmacist-intern shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.11(2) *Undue influence.*

a. A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices.

b. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

8.11(3) *Lease agreements.* A pharmacist shall not lease space for a pharmacy under any of the following conditions:

a. From a prescriber of prescription drugs or a group, corporation, association, or organization of such prescribers on a percentage of income basis;

b. From a group, corporation, association, or organization in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis; or

c. If the rent is not reasonable according to commonly accepted standards of the community in which the pharmacy will be located.

8.11(4) *Nonconformance with law.* A pharmacist, technician, support person, or pharmacist-intern shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

8.11(5) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.* A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A purchasing pharmacist or pharmacy shall not engage in any activity or include in any agreement with a selling pharmacist or pharmacy any provision that would prevent or prohibit the prior notifications required in subrule 8.35(7). A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" includes, but is not limited to, the

provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

8.11(6) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

8.11(7) *Claims of professional superiority.* A pharmacist shall not make a claim, assertion, or inference of professional superiority in the practice of pharmacy which cannot be substantiated, or claim an unusual, unsubstantiated capacity to supply a drug or professional service to the community.

8.11(8) *Unprofessional conduct or behavior.* A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient. Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

[**ARC 9526B**, IAB 6/1/11, effective 7/6/11]

657—8.12(126,147) Advertising. Prescription drug price and nonprice information may be provided to the public by a pharmacy so long as the information is not false or misleading and is not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer must be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy.

657—8.13(135C,155A) Personnel histories. Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid to provide treatment or services to any patient in the patient's home, whether the individual is paid by the pharmacy or by any other entity such as a corporation, a temporary staffing agency, or an independent contractor. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or drug being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or drug used to treat the patient in the patient's home.

8.13(1) *Applicant acknowledgment.* The pharmacy shall ask the following question of each person seeking employment in a position that will provide in-home services: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

8.13(2) *Criminal history check.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of public safety a form specified by the department of public safety and receive the results of a criminal history check.

8.13(3) *Abuse history checks.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of human services a form specified

by the department of human services and receive the results of a dependent adult abuse record check. The pharmacy may submit to the department of human services a form specified by the department of human services to request a child abuse history check.

a. A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services unless the department of human services has evaluated the crime or founded abuse report, has concluded that the crime or founded abuse does not merit prohibition from such employment, and has notified the pharmacy that the person may be employed to provide in-home services.

b. The pharmacy shall keep copies of all record checks and evaluations for a minimum of two years following receipt of the record or for a minimum of two years after the individual is no longer employed by the pharmacy, whichever is greater.

657—8.14(155A) Training and utilization of pharmacy technicians or pharmacy support persons. Pursuant to rule 657—8.3(155A), all Iowa-licensed pharmacies utilizing pharmacy technicians or pharmacy support persons shall have written policies and procedures for the training and utilization of pharmacy technicians and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—8.15(155A) Delivery of prescription drugs and devices. Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws, rules, and regulations relating to the practice of pharmacy, to patients at any place of business licensed as a pharmacy.

8.15(1) *Alternative methods.* A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

a. At the office or home of the prescriber.

b. At the residence of the patient or caregiver.

c. At the hospital or medical care facility in which a patient is confined.

d. At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the outpatient medical care facility;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;

(3) A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided that the means of transmission does not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the prescription and provided that the original written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and

(4) The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.

e. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, the prescriber, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

8.15(2) *Policies and procedures required.* Pursuant to rule 657—8.3(155A), every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall have policies and

procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).
[**ARC 7636B**, IAB 3/11/09, effective 4/15/09; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—8.16(124,155A) Confidential information.

8.16(1) *Definition.* "Confidential information" means information accessed or maintained by the pharmacy in the patient's records which contains personally identifiable information that could be used to identify the patient. This includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

8.16(2) *Release of confidential information.* Confidential information in the patient record may be released only as follows:

a. Pursuant to the express written authorization of the patient or the order or direction of a court.

b. To the patient or the patient's authorized representative.

c. To the prescriber or other licensed practitioner then caring for the patient.

d. To another licensed pharmacist when the best interests of the patient require such release.

e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

8.16(3) *Exceptions.* Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

a. Transferring a prescription to another pharmacy upon the request of the patient or the patient's authorized representative.

b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.

c. Providing drug therapy information to physicians or other authorized prescribers for their patients.

d. Disclosing information necessary for the processing of claims for payment of health care operations or services.

e. Transferring, subject to the provisions of subrule 8.35(7), prescription and patient records of a pharmacy that discontinues operation as a pharmacy to another licensed pharmacy that is held to the same standards of confidentiality and that agrees to act as custodian of the transferred records.

8.16(4) *System security and safeguards.* To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders.

8.16(5) *Record disposal.* Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.
[**ARC 9526B**, IAB 6/1/11, effective 7/6/11]

657—8.17 and **8.18** Reserved.

657—8.19(124,126,155A) Manner of issuance of a prescription drug or medication order. A prescription drug order or medication order may be transmitted from a prescriber or a prescriber's agent to a pharmacy in written form, orally including telephone voice communication, by facsimile transmission as provided in rule 657—21.9(124,155A), or by electronic transmission in accordance with applicable federal and state laws, rules, and regulations. Any prescription drug order or medication order provided to a patient in written or printed form shall include the original, handwritten signature of the prescriber except as provided in rule 657—21.7(124,155A).

8.19(1) *Requirements for a prescription.* A valid prescription drug order shall be based on a valid patient-prescriber relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

a. Written, electronic, or facsimile prescription. In addition to the electronic prescription application and pharmacy prescription application requirements of this rule, a written, electronic, or facsimile prescription shall include:

(1) The date issued.

(2) The name and address of the patient except as provided in subrule 8.19(7) for epinephrine auto-injectors.

(3) The name, strength, and quantity of the drug or device prescribed.

(4) The name and address of the prescriber and, if the prescription is for a controlled substance, the prescriber's DEA registration number.

(5) The written or electronic signature of the prescriber.

b. Written prescription. In addition to the requirements of paragraph 8.19(1)*"a,"* a written prescription shall be manually signed, with ink or indelible pencil, by the prescriber. The requirement for manual signature shall not apply when an electronically prepared and signed prescription for a noncontrolled substance is printed on security paper as provided in 657—paragraph 21.7(3)*"b."*

c. Facsimile prescription. In addition to the requirements of paragraph 8.19(1)*"a,"* a prescription transmitted via facsimile shall include:

(1) The identification number of the facsimile machine used to transmit the prescription to the pharmacy.

(2) The time and date of transmission of the prescription.

(3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.

(4) If the prescription is for a controlled substance and in compliance with DEA regulations, the manual signature of the prescriber.

d. Electronic prescription. In addition to the requirements of paragraph 8.19(1)*"a,"* an electronically prepared prescription for a controlled or noncontrolled prescription drug or device that is electronically transmitted to a pharmacy shall include the prescriber's electronic signature.

(1) An electronically prepared prescription for a controlled substance that is printed out or faxed by the prescriber or the prescriber's agent shall be manually signed by the prescriber.

(2) The prescriber shall ensure that the electronic prescription application used to prepare and transmit the electronic prescription complies with applicable state and federal laws, rules, and regulations regarding electronic prescriptions.

(3) The prescriber or the prescriber's agent shall provide verbal verification of an electronic prescription upon the request of the pharmacy.

8.19(2) *Verification.* The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order or medication order consistent with federal and state laws, rules, and regulations. In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

8.19(3) *Transmitting agent.* The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally, by facsimile transmission, or by electronic transmission provided that the first and last names and title of the transmitting agent are included in the order.

a. New order. A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names and title of the transmitting agent shall be included in the order. If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy. An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the

prescription has been printed prior to the electronic transmission. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

b. Refill order or renewal order. An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission, or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent and the first and last names and title of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph 8.19(3)*"a."*

8.19(4) *Receiving agent.* Regardless of the means of transmission to a pharmacy, only a pharmacist, a pharmacist-intern, or a certified pharmacy technician shall be authorized to receive a new prescription drug or medication order from a practitioner or the practitioner's agent. In addition to a pharmacist, a pharmacist-intern, and a certified pharmacy technician, a technician trainee or an uncertified pharmacy technician may receive a refill or renewal order from a practitioner or the practitioner's agent if the technician's supervising pharmacist has authorized that function.

8.19(5) *Legitimate purpose.* The pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors.

8.19(6) *Refills.* A refill is one or more dispensings of a prescription drug or device that result in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

a. Noncontrolled prescription drug or device. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

b. Controlled substance. A prescription for a Schedule III, IV, or V controlled substance may authorize no more than 5 refills within 6 months following the date on which the prescription is issued.

8.19(7) *Epinephrine auto-injector prescription issued to school or facility.* A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school. The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the facility, the school district, or the accredited nonpublic school in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of a prescription issued pursuant to this subrule shall be maintained in the name of the facility, school district, or accredited nonpublic school to which the prescription was issued and the drug was dispensed.

b. The label affixed to an epinephrine auto-injector dispensed pursuant to this subrule shall identify the name of the facility, school district, or accredited nonpublic school to which the prescription is dispensed.

8.19(8) *Opioid antagonist prescription issued to law enforcement, fire department, or service program.* A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more opioid antagonists in the name of a law enforcement agency, fire department, or service program pursuant to Iowa Code section 147A.18 and rule 657—8.31(135,147A).

The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the law enforcement agency, fire department, or service program in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of an opioid antagonist pursuant to this subrule shall be maintained in the name of the law enforcement agency, fire department, or service program to which the prescription was issued and the drug was dispensed.

b. The label affixed to an opioid antagonist dispensed pursuant to this subrule shall identify the name of the law enforcement agency, fire department, or service program to which the prescription is dispensed and shall be affixed such that the expiration date of the drug is not rendered illegible.

[**ARC 8171B**, IAB 9/23/09, effective 10/28/09; **ARC 9912B**, IAB 12/14/11, effective 1/18/12; **ARC 2414C**, IAB 2/17/16, effective 3/23/16; **ARC 2827C**, IAB 11/23/16, effective 11/3/16]

657—8.20(155A) Valid prescriber/patient relationship. Prescription drug orders and medication orders shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, any remaining prescription refills may be dispensed at the discretion of the pharmacist for a suitable amount of time so that the patient can establish care with a new provider and a new order can be issued. In determining the duration of which prescriptions may be dispensed, the pharmacist shall consider the patient's health care status and access to health care services.

[**ARC 3639C**, IAB 2/14/18, effective 3/21/18]

657—8.21(155A) Prospective drug use review. For purposes of promoting therapeutic appropriateness and ensuring rational drug therapy, a pharmacist shall review the patient record, information obtained from the patient, and each prescription drug or medication order to identify:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse;
8. Drug-prescriber contraindications.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem and shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants but may be delegated to registered pharmacist-interns under the direct supervision of the pharmacist.

657—8.22 to **8.25** Reserved.

657—8.26(155A) Continuous quality improvement program. Pursuant to rule 657—8.3(155A), each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program (CQI program). The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

8.26(1) *Reportable program events.* For purposes of this rule, a reportable program event or program event means a preventable medication error resulting in the incorrect dispensing of a prescribed drug received by or administered to the patient and includes but is not necessarily limited to:

a. An incorrect drug;

b. An incorrect drug strength;

c. An incorrect dosage form;

d. A drug received by the wrong patient;

e. Inadequate or incorrect packaging, labeling, or directions; or

f. Any incident related to a prescription dispensed to a patient that results in or has the potential to result in serious harm to the patient.

8.26(2) *Responsibility.* The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

8.26(3) *Policies and procedures.* Pursuant to rule 657—8.3(155A), each pharmacy shall have written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

a. Train all pharmacy personnel in relevant phases of the CQI program;

b. Identify and document reportable program events;

c. Minimize the impact of reportable program events on patients;

d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;

e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and

f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

8.26(4) *Event discovery and notification.* As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of and review all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or potential problems for the patient and that those steps are documented. Necessary steps include, but are not limited to, the following:

a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;

b. Identifying and communicating directions or processes for correcting the error; and

c. Communicating instructions for minimizing any negative impact on the patient.

8.26(5) *CQI program records.* All CQI program records shall be maintained on site at the pharmacy or shall be accessible at the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

a. The program event shall initially be documented as soon as practicable but no more than three days following discovery of the event by the staff member who discovers the event or is informed of the event.

b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:

(1) The date and time the program event was discovered and the name of the staff person who discovered the event; and

(2) The names of the individuals recording and reviewing or analyzing the program event information.

8.26(6) *Program event analysis and response.* The pharmacist in charge or designee shall review each reportable program event and determine if follow-up is necessary. When appropriate, information and data collected and documented shall be analyzed, individually and collectively, to assess the cause

and any factors contributing to the program event. The analysis may include, but is not limited to, the following:

a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;

b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and

c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15; **ARC 2413C**, IAB 2/17/16, effective 3/23/16]

657—8.27 to **8.29** Reserved.

657—8.30(126,155A) Sterile products. Rescinded IAB 6/6/07, effective 7/11/07.

657—8.31(135,147A) Opioid antagonist dispensing by pharmacists by standing order. An authorized pharmacist may dispense an opioid antagonist pursuant to a standing order established by the department, which standing order can be found via the board's Web site, or pursuant to a standing order authorized by an individual licensed health care professional in compliance with the requirements of this rule. An authorized pharmacist may only delegate the dispensing of an opioid antagonist to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist. Nothing in this rule prohibits a prescriber or facility from establishing and implementing standing orders or protocols under the authority granted to the prescriber or facility.

8.31(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"Authorized pharmacist" means an Iowa-licensed pharmacist who has completed the training requirements of this rule. "Authorized pharmacist" also includes an Iowa-registered pharmacist-intern who has completed the training requirements of this rule and is working under the direct supervision of an authorized Iowa-licensed pharmacist.

"Department" means the Iowa department of public health.

"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 fire fighter, or a peace officer as defined in Iowa Code section 801.4 who is trained and authorized to administer an opioid antagonist.

"Licensed health care professional" means a person licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 or 152E and registered with the board of nursing, or a physician assistant licensed to practice under the supervision of a physician as authorized in Iowa Code chapters 147 and 148C.

"Opioid antagonist" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Opioid-related overdose" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Person in a position to assist" means a family member, friend, caregiver, health care provider, employee of a substance abuse treatment facility, or other person who may be in a position to render aid to a person at risk of experiencing an opioid-related overdose.

"Recipient" means an individual at risk of an opioid-related overdose or a person in a position to assist an individual at risk of an opioid-related overdose.

"Standing order" means a preauthorized medication order with specific instructions from the licensed health care professional to dispense a medication under clearly defined circumstances.

8.31(2) *Authorized pharmacist training.* An authorized pharmacist shall document successful completion of an ACPE-approved continuing education program of at least one-hour duration related to opioid antagonist utilization prior to dispensing opioid antagonists pursuant to a standing order.

8.31(3) *Additional supply.* Notwithstanding a standing order to the contrary, an authorized pharmacist shall only dispense an opioid antagonist after completing an eligibility assessment and providing training and education to the recipient.

8.31(4) *Assessment.* An authorized pharmacist shall assess an individual for eligibility to receive an opioid antagonist pursuant to a standing order. In addition to the criteria identified in a standing order, an authorized pharmacist shall also take into consideration the following criteria to determine the eligibility of the recipient to receive and possess an opioid antagonist:

a. The person at risk of an opioid-related overdose for which the opioid antagonist is intended to be administered has no known sensitivity or allergy to naloxone, unless the person at risk is not known to the recipient, including but not limited to a first responder or member of law enforcement.

b. The recipient is oriented to person, place, and time and able to understand and learn the essential components of opioid-related overdose, appropriate response, and opioid antagonist administration.

8.31(5) *Recipient training and education.* Upon assessment and determination that an individual is eligible to receive and possess an opioid antagonist pursuant to a standing order, an authorized pharmacist shall, prior to dispensing an opioid antagonist pursuant to a standing order, provide training and education to the recipient that includes, but is not limited to, the information identified in this subrule. An authorized pharmacist shall require the recipient to attest that, if the product will be accessible to any other individual for administration, the recipient will make available to such individual all received training and education materials. An authorized pharmacist may provide to the recipient written materials that include, but may not be limited to, the information identified in this subrule, but it shall not be in lieu of direct pharmacist consultation with the recipient.

a. The signs and symptoms of opioid-related overdose as described in the standing order.

b. The importance of calling 911 as soon as possible and the potential need for rescue breathing.

c. The appropriate use and directions for administration of the opioid antagonist to be dispensed pursuant to the standing order.

d. Adverse reactions of the opioid antagonist as well as reactions resulting from opioid withdrawal following administration.

e. The proper storage conditions, including temperature excursions, of the opioid antagonist being dispensed.

f. The expiration date of the opioid antagonist being dispensed and the appropriate disposal of the opioid antagonist upon expiration.

g. The prohibition of the recipient from further distributing the opioid antagonist to another individual, unless that individual has received appropriate training and education.

h. Information about substance abuse or behavioral health treatment programs.

8.31(6) *Labeling.* Upon the determination that a recipient is eligible to receive and possess an opioid antagonist, an authorized pharmacist shall label the product pursuant to rule 657—6.10(126,155A) and subrule 8.19(8). An authorized pharmacist shall ensure that the labeling does not render the expiration date of the product illegible. The medication shall be dispensed in the name of the eligible recipient.

8.31(7) *Reporting.* A copy of the assessment form shall be submitted to the department as provided on the assessment form within seven days of the dispensing of the opioid antagonist or within seven days of a denial of eligibility.

8.31(8) *Records.* An authorized pharmacist shall create and maintain an original record of each individual assessment on forms provided by the board, regardless of the eligibility determination following assessment, and dispensing of opioid antagonists pursuant to a standing order. These records shall be available for inspection and copying by the board or its authorized agent for at least two years.

[**ARC 2827C**, IAB 11/23/16, effective 11/3/16]

657—8.32(124,155A) Individuals qualified to administer. The board designates the following as qualified individuals to whom a practitioner may delegate the administration of prescription drugs. Any person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs shall construe nothing in this rule to limit that authority.

1. Persons who have successfully completed a medication administration course.

2. Licensed pharmacists.

657—8.33(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule. An authorized pharmacist may only delegate the administration of a vaccine to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"ACIP" means the CDC Advisory Committee on Immunization Practices.

"ACPE" means the Accreditation Council for Pharmacy Education.

"Authorized pharmacist" means an Iowa-licensed pharmacist who has met the requirements identified in subrule 8.33(2).

"Authorized pharmacist-intern" means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in paragraphs 8.33(2)*"a"* and *"c."*

"CDC" means the United States Centers for Disease Control and Prevention.

"Immunization" shall have the same meaning as, and shall be interchangeable with, the term "vaccine."

"Protocol" means a standing order for a vaccine to be administered by an authorized pharmacist.

"Vaccine" means a specially prepared antigen administered to a person for the purpose of providing immunity.

8.33(2) *Authorized pharmacist training and continuing education.* An authorized pharmacist shall document successful completion of the requirements in paragraph 8.33(2)*"a"* and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 8.33(2)*"b."*

a. Initial qualification. An authorized pharmacist shall have successfully completed an organized course of study in a college or school of pharmacy or an ACPE-accredited continuing education program on vaccine administration that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers.

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current CDC guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment, counseling, and identification of contraindications to the vaccine;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. Continuing education. During any pharmacist license renewal period, an authorized pharmacist who engages in the administration of vaccines shall complete and document at least one hour of continuing education related to vaccines.

c. Certification maintained. During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in the American Heart Association or the Red Cross basic cardiac life support protocol for health care providers.

8.33(3) *Protocol requirements.* A pharmacist may administer vaccines pursuant to CDC protocols. A protocol shall be unique to a pharmacy. The prescriber who signs a protocol shall identify within the protocol, by name or category, those pharmacists or other qualified health professionals that the

prescriber is authorizing to administer vaccines pursuant to the protocol. Links to CDC protocols shall be provided on the board's Web site at www.iowa.gov/ibpe. A protocol:

a. Shall be signed by a licensed Iowa prescriber practicing in Iowa.

b. Shall expire no later than one year from the effective date of the signed protocol.

c. Shall be effective for patients who wish to receive a vaccine administered by an authorized pharmacist, who meet the CDC recommended criteria, and who have no contraindications as published by the CDC.

d. Shall require the authorized pharmacist to notify the prescriber who signed the protocol within 24 hours of a serious complication and shall submit a Vaccine Advisory Event Reporting System (VAERS) report.

e. Shall specifically indicate whether the authorizing prescriber agrees that the administration of vaccines may be delegated by the authorized pharmacist to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(4) *Influenza and other emergency vaccines.* An authorized pharmacist shall only administer via protocol, to patients six years of age and older, influenza vaccines and other emergency vaccines in response to a public health emergency.

8.33(5) *Other adult vaccines.* An authorized pharmacist shall only administer via protocol, to patients 18 years of age and older, the following vaccines:

a. A vaccine on the ACIP-approved adult vaccination schedule.

b. A vaccine recommended by the CDC for international travel.

8.33(6) *Vaccines administered via prescription.* An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. In case of serious complications, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

8.33(7) *Verification and reporting.* The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 8.33(4). An authorized pharmacist shall:

a. Prior to administering a vaccine identified in subrule 8.33(5) or subrule 8.33(6), consult the statewide immunization registry or health information network.

b. Within 30 days following administration of a vaccine identified in subrule 8.33(5) or subrule 8.33(6), report the vaccine administration to the statewide immunization registry or health information network and to the patient's primary health care provider, if known.

[**ARC 1030C**, IAB 9/18/13, effective 9/1/13; **ARC 1786C**, IAB 12/10/14, effective 1/14/15]

657—8.34(155A) Collaborative drug therapy management. An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with a physician pursuant to the requirements of this rule. The physician retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

8.34(1) *Definitions.*

"Authorized pharmacist" means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this rule.

"Board" means the board of pharmacy.

"Collaborative drug therapy management" means participation by an authorized pharmacist and a physician in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and hospital clinic patients through a hospital practice protocol.

"Community practice protocol" means a written, executed agreement entered into voluntarily between an authorized pharmacist and a physician establishing drug therapy management for one or

more of the pharmacist's and physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 8.34(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Drug therapy management criteria" means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and physicians within a hospital and the hospital's clinics as developed and determined by the hospital's P&T committee. Such a protocol may apply to all pharmacists and physicians at a hospital or the hospital's clinics or only to those pharmacists and physicians who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 8.34(3).

"IBM" means the Iowa board of medicine.

"P&T committee" means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

"Therapeutic interchange" means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

8.34(2) *Community practice protocol.*

a. An authorized pharmacist shall engage in collaborative drug therapy management with a physician only under a written protocol that has been identified by topic and has been submitted to the board or a committee authorized by the board. A protocol executed after July 1, 2008, will no longer be required to be submitted to the board; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBM.

b. The community practice protocol shall include:

(1) The name, signature, date, and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal authorized pharmacist shall be designated in the protocol.

(2) The name, signature, date, and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for securing the patient's written consent. If the patient's consent is not secured by the physician, the authorized pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the physician including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests, and physical findings upon which the authorized pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy management protocol to be reviewed, updated, and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the authorized pharmacist is to provide to the physician and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame within which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing, and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the authorized pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least one authorized pharmacist and at least one physician.

d. The collaborative drug therapy protocol must be filed with the board, kept on file in the pharmacy, and be made available upon request of the board or the IBM. After July 1, 2008, protocols shall no longer be filed with the board but shall be maintained in the pharmacy and made available to the board and the IBM upon request.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the board. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the board of changes in a protocol but the written notification shall be maintained in the pharmacy and made available upon request of the board or the IBM.

f. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient shall be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

8.34(3) *Hospital practice protocol.*

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by the hospital's pharmacists.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of pharmacists and physicians who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the P&T committee authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

657—8.35(155A) Pharmacy license. A pharmacy license issued by the board is required for all sites where prescription drugs are offered for sale or dispensed under the supervision of a pharmacist. A pharmacy license issued by the board is also required for all sites where drug information or other cognitive pharmacy services, including but not limited to drug use review and patient counseling, are provided by a pharmacist. The board may issue any of the following types of pharmacy licenses: a general pharmacy license, a hospital pharmacy license, a special or limited use pharmacy license, or

a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy practice except when specific exemptions have been granted. Applicants for general or hospital pharmacy practice shall comply with board rules regarding general or hospital pharmacy practice except when specific exemptions have been granted. Any pharmacy located within Iowa that dispenses controlled substances must also register pursuant to 657—Chapter 10.

8.35(1) *Exemptions.* Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," a "nonresident pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written petition for exemption from certain licensure requirements shall be submitted pursuant to the procedures and requirements of 657—Chapter 34 and will be determined on a case-by-case basis.

8.35(2) *Limited use pharmacy license.* Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, telepharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

8.35(3) *Application form.* Application for licensure and license renewal shall be on forms provided by the board. The application for a pharmacy license shall require an indication of the pharmacy ownership classification. If the owner is a sole proprietorship (100 percent ownership), the name and address of the owner shall be indicated. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be listed or attached. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be listed or attached. Any other pharmacy ownership classification shall be further identified and explained on the application. The application form shall require the name, signature, and license number of the pharmacist in charge. The names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians and pharmacy support persons working in the pharmacy, and the average number of hours worked by each pharmacist, pharmacy technician, and pharmacy support person shall be listed or attached. Additional information may be required of specific types of pharmacy license applicants. The application shall be signed by the pharmacy owner or the owner's, partnership's, or corporation's authorized representative.

8.35(4) *License expiration and renewal.* General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be $135.

a. Late payment penalty. Failure to renew the pharmacy license before January 1 following expiration shall require payment of the renewal fee and a penalty fee of $135. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of $225. Failure to renew the license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of $315. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of $405 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a pharmacy license exceed $540.

b. Delinquent license. If a license is not renewed before its expiration date, the license is delinquent and the licensee may not operate or provide pharmacy services to patients in the state of Iowa until the licensee renews the delinquent license. A pharmacy that continues to operate in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

8.35(5) *Inspection of new pharmacy location.* If the new pharmacy location within Iowa was not a licensed pharmacy immediately prior to the proposed opening of the new pharmacy, the pharmacy location shall require an on-site inspection by a pharmacy board inspector prior to the issuance of the pharmacy license. The purpose of the inspection is to determine compliance with requirements pertaining to space, library, equipment, security, temperature control, and drug storage safeguards. Inspection may be scheduled anytime following submission of necessary license and registration applications and prior

to opening for business as a pharmacy. Prescription drugs, including controlled substances, may not be delivered to a new pharmacy location prior to satisfactory completion of the opening inspection.

8.35(6) *Pharmacy license changes.* When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

a. Location. A change of pharmacy location in Iowa shall require an on-site inspection of the new location as provided in subrule 8.35(5) if the new location was not a licensed pharmacy immediately prior to the relocation.

b. Ownership. A change of ownership of a currently licensed Iowa pharmacy, or a change of pharmacy location to another existing Iowa pharmacy location, shall not require on-site inspection pursuant to subrule 8.35(5). A new pharmacy license is required as provided in this subrule. A change of ownership effectively consists of a closing pharmacy, which is subject to the requirements for a closing pharmacy, and of a new pharmacy, which is subject to the requirements of a new pharmacy, with the possible exception of the on-site inspection as provided by this paragraph. In those cases in which the pharmacy is owned by a corporation, the sale or transfer of all stock of the corporation does not constitute a change of ownership provided the corporation that owns the pharmacy continues to exist and continues to own the pharmacy following the stock sale or transfer.

c. Pharmacist in charge. A change of pharmacist in charge shall require completion and submission of the application and fee for a new pharmacy license.

(1) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge shall be submitted to the board by the pharmacy owner or the pharmacy owner's authorized representative and by the temporary pharmacist in charge within 10 days following the vacancy.

(2) Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

8.35(7) *Closing pharmacy.* A closing pharmacy shall ensure that all patient and prescription records are transferred to another pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian of the records for the appropriate retention period for each record type as required by federal or state laws, rules, or regulations. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy closing for delivery of the notifications to the pharmacist in charge, the board, the Drug Enforcement Administration (DEA), and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

a. Pharmacist in charge notification. At least 40 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the closing pharmacy, if that individual is not an owner of the closing pharmacy, shall be notified of the proposed sale. The owner of the closing pharmacy may direct the pharmacist in charge to maintain information regarding the pending closure of the pharmacy confidential until public notifications are required 30 days prior to the pharmacy closing. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and time lines established by this subrule. The pharmacist in charge of the closing pharmacy shall prepare patient notifications pursuant to paragraph 8.35(7)*"d."* At least 30 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the purchasing or receiving pharmacy, if that individual is not an owner of the pharmacy, shall be notified of the pending transaction.

b. Board and DEA notifications. At least 30 days prior to the closing of a pharmacy, including a closing by sale of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement

Administration (DEA) notifying those agencies of the intent to discontinue business or to sell the pharmacy and including the anticipated date of closing. These prior notifications shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. Notifications shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

c. Terms of sale or purchase. If the closing is due to the sale of the pharmacy, a copy of the sale or purchase agreement, not including information regarding the monetary terms of the transaction, shall be submitted to the board upon the request of the board. The agreement shall include a written assurance from the closing pharmacy to the purchasing pharmacy that the closing pharmacy has given or will be giving notice to its patients as required by this subrule.

d. Patient notification. At least 30 days prior to closing, a closing pharmacy shall make a reasonable effort to notify all patients who had a prescription filled by the closing pharmacy within the last 18 months that the pharmacy intends to close, including the anticipated closing date.

(1) Written notification shall identify the pharmacy that will be receiving the patient's prescriptions and records. The notification shall advise patients that if they have any questions regarding their prescriptions and records that they may contact the closing pharmacy. If the closing pharmacy receives no contact from the patient within the 30-day notification period prior to the pharmacy closing, all patient information will be transferred to the receiving pharmacy. The notification shall also advise patients that after the date of closing patients may contact the pharmacy to which the prescriptions and records have been transferred.

(2) Written notification shall be delivered to each patient at the patient's last address on file with the closing pharmacy by direct mail or personal delivery and also by public notice. Public notice refers to the display, in a location and manner clearly visible to patients, of signs in pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, or at pharmacy prescription counters. In addition, notice may be posted on the pharmacy's Web site, displayed on a marquee or electronic sign, communicated via automated message on the pharmacy's telephone system, or published in one or more local newspapers or area shopper publications.

e. Patient communication by receiving pharmacy. A pharmacy receiving the patient records of another pharmacy shall not contact the patients of the closing pharmacy until after the transfer of those patient records from the closing pharmacy to the receiving pharmacy and after the closure of the closing pharmacy.

f. Prescription drug inventory. A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be included in the records of each licensee.

(1) DEA Form 222 is required for transfer of Schedule II controlled substances.

(2) The inventory of controlled substances shall be completed pursuant to the requirements in 657—10.19(124,155A).

(3) The inventory of all noncontrolled prescription drugs may be estimated.

(4) The inventory shall include the name, strength, dosage form, and quantity of all prescription drugs transferred.

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule 657—10.22(124).

g. Surrender of certificates and forms. The pharmacy license certificate and CSA registration certificate of the closing or selling pharmacy shall be returned to the board office within ten days of closing or sale. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA within ten days of closing. All authorizations to utilize the DEA's online controlled substances ordering system (CSOS) and all digital certificates issued for the purpose of ordering controlled substances for the closing pharmacy shall be canceled or revoked within ten days of closing.

h. Signs at closed pharmacy location. A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy. Nothing in this paragraph shall prohibit the display of a public notice to patients, as required in paragraph 8.35(7)*"d,"* for a reasonable period not to exceed six months following the pharmacy closing.

8.35(8) *Failure to complete licensure.* An application for a pharmacy license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9526B**, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); **ARC 9693B**, IAB 9/7/11, effective 8/11/11; **ARC 0504C**, IAB 12/12/12, effective 1/16/13; **ARC 1962C**, IAB 4/15/15, effective 5/20/15; **ARC 3236C**, IAB 8/2/17, effective 9/6/17; **ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—8.36 to **8.39** Reserved.

657—8.40(155A,84GA,ch63) Pharmacy pilot or demonstration research projects. The purpose of this rule is to specify the procedures to be followed in applying for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy as authorized by 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31. In reviewing projects, the board will consider only projects that expand pharmaceutical care services that contribute to positive patient outcomes. The board will not consider any project intended only to provide a competitive advantage to a single applicant or group of applicants.

8.40(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"Act" means Iowa Code chapter 155A, the Iowa pharmacy practice Act.

"Board" means the Iowa board of pharmacy.

"Practice of pharmacy" means the practice of pharmacy as defined in Iowa Code section 155A.3(34).

"Project" means a pilot or demonstration research project as described in this rule.

8.40(2) *Scope of project.* A project may not expand the definition of the practice of pharmacy. A project may include therapeutic substitution or substitution of medical devices used in patient care if such substitution is included under a collaborative drug therapy management protocol established pursuant to rule 657—8.34(155A).

8.40(3) *Board approval of a project.* Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall initially be for a specified period of time not exceeding 18 months from commencement of the project. The board may approve the extension or renewal of a project following consideration of a petition that clearly identifies the project, that includes a report similar to the final project report described in paragraph 8.40(6)*"a,"* that describes and explains any proposed changes to the originally approved and implemented project, and that justifies the need for extending or renewing the term of the project.

8.40(4) *Applying for approval of a project.* A person who wishes the board to consider approval of a project shall submit to the board a petition for approval that contains at least the following information:

a. Responsible pharmacist. Name, address, telephone number, and pharmacist license number of each pharmacist responsible for overseeing the project.

b. Location of project. Name, address, and telephone number of each specific location and, if a location is a pharmacy, the pharmacy license number where the proposed project will be conducted.

c. Project summary. A detailed summary of the proposed project that includes at least the following information:

(1) The goals, hypothesis, and objectives of the proposed project.

(2) A full explanation of the project and how it will be conducted.

(3) The time frame for the project including the proposed start date and length of study. The time frame may not exceed 18 months from the proposed start date of the project.

(4) Background information or literature review to support the proposed project.

(5) The rule or rules to be waived in order to complete the project and a request to waive the rule or rules.

(6) Procedures to be used during the project to ensure that the public health and safety are not compromised as a result of the waiver.

8.40(5) *Review and approval or denial of a proposed project.*

a. *Staff review.* Upon receipt of a petition for approval of a project, board staff shall initially review the petition for completeness and appropriateness. If the petition is incomplete or inappropriate for board consideration, board staff shall return the petition to the requestor with a letter explaining the reason the petition is being returned. A petition that has been returned pursuant to this paragraph may be amended or supplemented as necessary and submitted for reconsideration.

b. *Board review.* Upon review by the board of a petition for approval of a project, the board shall either approve or deny the petition. If the board approves the petition, the approval:

(1) Shall be specific for the project requested;

(2) Shall approve the project for a specific time period; and

(3) May include conditions or qualifications applicable to the project.

c. *Inspection.* The project site and project documentation shall be available for inspection and review by the board or its representative at any time during the project review and the approval or denial processes and, if a project is approved, throughout the approved term of the project.

d. *Documentation maintained.* Project documentation shall be maintained and available for inspection, review, and copying by the board or its representative for at least two years following completion or termination of the project.

8.40(6) *Presentation of reports.* The pharmacist responsible for overseeing a project shall be responsible for submitting to the board any reports required as a condition of a project, including the final project report.

a. *Final project report.* The final project report shall include a written summary of the results of the project and the conclusions drawn from those results. The final project report shall be submitted to the board within three months after completion or termination of the project.

b. *Board review.* The board shall receive and review any report regarding the progress of a project and the final project report at a regularly scheduled meeting of the board. The report shall be an item on the open session agenda for the meeting.

[**ARC 0393C**, IAB 10/17/12, effective 11/21/12; **ARC 1032C**, IAB 9/18/13, effective 10/23/13]

These rules are intended to implement Iowa Code sections 124.101, 124.301, 124.306, 124.308, 126.10, 126.11, 126.16, 135C.33, 147.7, 147.55, 147.72, 147.74, 147.76, 155A.2 through 155A.4, 155A.6, 155A.10, 155A.12 through 155A.15, 155A.19, 155A.20, 155A.27 through 155A.29, 155A.32, and 155A.33 and 2013 Iowa Acts, Senate File 353.

[Filed 4/11/68; amended 11/14/73]

[Filed 11/24/76, Notice 10/20/76—published 12/15/76, effective 1/19/77]

[Filed 11/9/77, Notice 10/5/77—published 11/30/77, effective 1/4/78]

[Filed emergency 12/9/77—published 12/28/77, effective 12/9/77]

[Filed 10/20/78, Notice 8/9/78—published 11/15/78, effective 1/9/79]

[Filed 12/2/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]

[Filed 12/21/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]

[Filed 1/8/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]

[Filed 8/28/79, Notice 5/30/79—published 9/19/79, effective 10/24/79]

[Filed 12/7/79, Notice 10/3/79—published 12/26/79, effective 1/30/80]

[Filed 2/22/80, Notice 10/3/79—published 3/19/80, effective 4/23/80]

[Filed emergency 4/22/80—published 5/14/80, effective 4/22/80]

[Filed 12/1/80, Notice 10/15/80—published 12/24/80, effective 1/28/81]
[Filed 2/12/81, Notice 12/24/80—published 3/4/81, effective 4/8/81]
[Filed 5/27/81, Notice 4/1/81—published 6/24/81, effective 7/29/81]
[Filed emergency 7/28/81—published 8/19/81, effective 8/1/81]
[Filed emergency 9/14/81—published 9/30/81, effective 9/30/81]
[Filed 7/28/82, Notice 3/17/82—published 8/18/82, effective 9/22/82]
[Filed emergency 8/26/82—published 9/15/82, effective 9/22/82]
[Filed 9/10/82, Notice 6/9/82—published 9/29/82, effective 11/8/82]
[Filed emergency 10/6/82—published 10/27/82, effective 10/27/82]◊
[Filed emergency 12/2/82—published 12/22/82, effective 12/22/82]
[Filed 11/18/83, Notice 8/3/83—published 12/7/83, effective 1/11/84]
[Filed 1/13/84, Notice 11/9/83—published 2/1/84, effective 3/7/84]
[Filed 6/22/84, Notice 4/11/84—published 7/18/84, effective 8/22/84]
[Filed emergency 7/13/84—published 8/1/84, effective 7/13/84]
[Filed 9/21/84, Notice 7/18/84—published 10/10/84, effective 11/14/84]
[Filed 2/22/85, Notice 11/21/84—published 3/13/85, effective 4/18/85]
[Filed emergency 6/18/85—published 7/3/85, effective 7/1/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]◊
[Filed 11/27/85, Notice 8/28/85—published 12/18/85, effective 1/22/86]
[Filed 9/19/86, Notice 6/4/86—published 10/8/86, effective 11/12/86]
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 1/21/88, Notice 11/4/87—published 2/10/88, effective 3/16/88]
[Filed 3/29/88, Notice 1/27/88—published 4/20/88, effective 5/25/88]
[Filed 3/29/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 11/17/88, Notice 8/24/88—published 12/14/88, effective 1/18/89]◊
[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed 12/26/89, Notice 10/4/89—published 1/24/90, effective 2/28/90]
[Filed 3/19/90, Notice 1/10/90—published 4/18/90, effective 5/23/90]
[Filed 8/31/90, Notice 6/13/90—published 9/19/90, effective 10/24/90]
[Filed 1/29/91, Notice 6/13/90—published 2/20/91, effective 3/27/91]
[Filed 1/29/91, Notice 9/19/90—published 2/20/91, effective 3/27/91]
[Filed 4/26/91, Notice 2/20/91—published 5/15/91, effective 6/19/91]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed 7/30/91, Notice 5/29/91—published 8/21/91, effective 9/25/91]
[Filed 1/21/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed 3/12/92, Notice 1/8/92—published 4/1/92, effective 5/6/92]
[Filed 5/21/92, Notice 4/1/92—published 6/10/92, effective 7/15/92]
[Filed 10/22/92, Notice 9/2/92—published 11/11/92, effective 1/1/93]
[Filed 2/5/93, Notice 11/11/92—published 3/3/93, effective 4/8/93]
[Filed 9/23/93, Notice 5/26/93—published 10/13/93, effective 11/17/93]
[Filed 3/21/94, Notices 10/13/93, 12/8/93—published 4/13/94, effective 5/18/94]
[Filed 6/24/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 11/30/94, Notices 5/11/94, 7/20/94—published 12/21/94, effective 1/25/95]
[Filed 3/22/95, Notice 11/9/94—published 4/12/95, effective 5/31/95]
[Filed 10/6/95, Notices 6/7/95, 8/16/95—published 10/25/95, effective 1/1/96]
[Filed emergency 12/14/95—published 1/3/96, effective 1/1/96]
[Filed 12/10/96, Notice 8/28/96—published 1/1/97, effective 2/5/97]
[Filed 2/27/97, Notice 8/28/96—published 3/26/97, effective 4/30/97]
[Filed 2/27/97, Notice 1/1/97—published 3/26/97, effective 4/30/97]
[Filed 6/23/97, Notice 3/26/97—published 7/16/97, effective 8/20/97]
[Filed 11/19/97, Notice 10/8/97—published 12/17/97, effective 1/21/98]

[Filed 4/24/98, Notice 3/11/98—published 5/20/98, effective 6/24/98]
[Filed 7/31/98, Notice 5/20/98—published 8/26/98, effective 10/15/98]
[Filed 4/22/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]
[Filed 11/23/99, Notice 6/2/99—published 12/15/99, effective 1/19/00]
[Filed 2/18/00, Notice 12/15/99—published 3/22/00, effective 4/26/00]
[Filed 11/9/00, Notice 4/19/00—published 11/29/00, effective 1/3/01]
[Filed 8/14/02, Notice 6/12/02—published 9/4/02, effective 10/9/02]
[Filed 3/11/04, Notice 8/6/03—published 3/31/04, effective 5/5/04]
[Filed emergency 7/16/04 after Notice 6/9/04—published 8/4/04, effective 7/16/04]
[Filed 10/22/04, Notice 3/31/04—published 11/10/04, effective 12/15/04]
[Filed 10/22/04, Notice 5/12/04—published 11/10/04, effective 12/15/04]
[Filed 6/2/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]
[Filed emergency 6/30/05 after Notice 5/11/05—published 7/20/05, effective 7/1/05]
[Filed 3/22/06, Notice 1/18/06—published 4/12/06, effective 5/17/06]
[Filed 5/17/06, Notice 4/12/06—published 6/7/06, effective 7/12/06]
[Filed 5/17/06, Notice 2/15/06—published 6/7/06, effective 10/1/06]
[Filed 11/30/06, Notice 9/27/06—published 12/20/06, effective 1/24/07]
[Filed 2/7/07, Notice 10/25/06—published 2/28/07, effective 4/4/07]
[Filed 5/14/07, Notice 2/28/07—published 6/6/07, effective 7/11/07]◊
[Filed 8/3/07, Notice 5/9/07—published 8/29/07, effective 10/3/07]
[Filed 8/3/07, Notice 6/20/07—published 8/29/07, effective 10/3/07]
[Filed emergency 11/13/07 after Notice 8/29/07—published 12/5/07, effective 11/13/07]
[Filed 11/13/07, Notice 8/29/07—published 12/5/07, effective 1/9/08]
[Filed 5/19/08, Notice 3/26/08—published 6/18/08, effective 7/23/08]
[Filed 9/5/08, Notice 7/2/08—published 9/24/08, effective 10/29/08]
[Filed ARC 7636B (Notice ARC 7448B, IAB 12/31/08), IAB 3/11/09, effective 4/15/09]
[Filed ARC 8171B (Notice ARC 7910B, IAB 7/1/09), IAB 9/23/09, effective 10/28/09]
[Filed ARC 8539B (Notice ARC 8269B, IAB 11/4/09), IAB 2/24/10, effective 4/1/10]
[Filed ARC 8673B (Notice ARC 8380B, IAB 12/16/09), IAB 4/7/10, effective 6/1/10]
[Filed ARC 8671B (Notice ARC 8414B, IAB 12/30/09), IAB 4/7/10, effective 5/12/10]
[Filed ARC 9409B (Notice ARC 9194B, IAB 11/3/10), IAB 3/9/11, effective 4/13/11]
[Filed ARC 9526B (Notice ARC 9295B, IAB 12/29/10), IAB 6/1/11, effective 7/6/11][1]
[Editorial change: IAC Supplement 6/29/11]
[Filed Emergency ARC 9693B, IAB 9/7/11, effective 8/11/11]
[Filed ARC 9912B (Notice ARC 9671B, IAB 8/10/11), IAB 12/14/11, effective 1/18/12]
[Filed ARC 0393C (Notice ARC 0256C, IAB 8/8/12), IAB 10/17/12, effective 11/21/12]
[Filed ARC 0503C (Notice ARC 0371C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]
[Filed ARC 0504C (Notice ARC 0351C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]
[Filed Emergency After Notice ARC 1030C (Notice ARC 0883C, IAB 7/24/13), IAB 9/18/13, effective 9/1/13]
[Filed ARC 1032C (Notice ARC 0882C, IAB 7/24/13), IAB 9/18/13, effective 10/23/13]
[Filed ARC 1576C (Notice ARC 1411C, IAB 4/2/14), IAB 8/20/14, effective 9/24/14]
[Filed ARC 1786C (Notice ARC 1652C, IAB 10/1/14), IAB 12/10/14, effective 1/14/15]
[Filed ARC 1961C (Notice ARC 1793C, IAB 12/10/14), IAB 4/15/15, effective 5/20/15]
[Filed ARC 1962C (Notice ARC 1792C, IAB 12/10/14), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2408C (Notice ARC 2285C, IAB 12/9/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2413C (Notice ARC 2307C, IAB 12/9/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2414C (Notice ARC 2288C, IAB 12/9/15), IAB 2/17/16, effective 3/23/16]
[Filed Emergency After Notice ARC 2827C (Notice ARC 2721C, IAB 9/28/16), IAB 11/23/16, effective 11/3/16]
[Filed ARC 3236C (Notice ARC 3037C, IAB 4/26/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3345C (Notice ARC 3136C, IAB 6/21/17), IAB 9/27/17, effective 11/1/17]

[Filed ARC 3639C (Notice ARC 3371C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

◊ Two or more ARCs

[1] July 6, 2011, effective date of 8.35(7) delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011.

CHAPTER 9
AUTOMATED MEDICATION DISTRIBUTION SYSTEMS AND TELEPHARMACY SERVICES

Rescinded **ARC 3640C**, IAB 2/14/18, effective 3/21/18

CHAPTER 11
DRUGS IN EMERGENCY MEDICAL SERVICE PROGRAMS

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 11]

657—11.1(124,147A,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Adulterated" means any drug or device that consists in whole or in part of any filthy, putrid, or decomposed substance.

"Ambulance service" means any privately or publicly owned service program that utilizes ambulances, including air transport vehicles, in order to provide patient transportation and emergency medical services.

"Authorized prescriber" means any provider who has prescriptive authority in the state of Iowa.

"Board" means the board of pharmacy.

"Bureau" means the Iowa department of public health, bureau of emergency and trauma services (BETS).

"Controlled substance" means any drug that is identified in Schedules I through V of Iowa Code chapter 124, the Iowa uniform controlled substances Act.

"CSA registration" means a registration issued by the board pursuant to Iowa Code chapter 124, the Iowa uniform controlled substances Act.

"DEA" means the U.S. Department of Justice, Drug Enforcement Administration.

"DEA registration" means a registration issued by the DEA pursuant to 21 CFR Part 1301.

"Department" means the Iowa department of public health.

"Drug" means a substance as defined in Iowa Code section 155A.3(13) but does not include nonmedicated intravenous solutions such as saline.

"Emergency medical care provider" means an emergency medical care provider as defined in 641—131.1(147A).

"Emergency medical services" or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care.

"Emergency medical technician" or *"EMT"* means any emergency medical technician or EMT as defined in 641—131.1(147A).

"Medical direction" means direction, advice, or orders provided, in accordance with written parameters and protocols, to emergency medical care personnel by a medical director, supervising physician, or physician designee.

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

"Medical director-based" means that ownership of the drugs maintained in and used by the service program remains with the medical director.

"Patient care report" means a computerized or written report that documents the assessment and management of the patient by the emergency medical care provider.

"Pharmacy-based" means that ownership of the drugs maintained in and used by the service program remains with the pharmacy.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Physician assistant" or *"PA"* means any individual licensed under Iowa Code chapter 148C.

"Primary program site" means the physical location from which the service program is operated and at which stock supplies of prescription drugs may be maintained and distributed to a program vehicle and a program substation.

"Program substation" means the physical location from which a service program is operated as a branch or extension of a primary program site, at which an emergency kit or supply of prescription drugs is maintained, and at which a stock supply of prescription drugs is not maintained.

"Protocols" means written direction and orders, consistent with the department's standard of care, that are to be followed by an emergency medical care provider in emergency and nonemergency

situations. Protocols shall be approved by the service program's medical director and shall address the care of both adult and pediatric patients.

"Responsible individual" means the individual who maintains legal responsibility of the prescription drugs and devices. "Responsible individual" includes the medical director in a medical director-based service program or the pharmacist in charge in a pharmacy-based service program.

"Service" or *"service program"* means any medical care ambulance service or nontransport service that has received authorization from the department.

"Service director" means the individual who is responsible for the operation and administration of a service program.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A who supervises and is responsible for medical direction of emergency medical care personnel when such personnel are providing emergency medical care.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 0342C**, IAB 10/3/12, effective 11/7/12; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.2(124,147A,155A) Responsibility. Each service program shall appoint a service director at the primary program site and shall have a responsible individual who is responsible for ensuring that the management of all prescription drugs complies with federal and state laws and regulations. In service programs that maintain both a pharmacy-based service program agreement and a medical director-based service program agreement, the responsible individual for each service program agreement shall be responsible for ensuring the management of drugs under that individual's ownership. If more than one pharmacy enters into an agreement with a pharmacy-based service program, the pharmacist in charge at each pharmacy is responsible for the rules and laws pertaining to the specific prescription drugs, including controlled substances, that each pharmacy provides to the service program.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.3(124,147A,155A) Registration required. In any service program which intends to provide services in or into Iowa that include the administration of controlled substances, the responsible individual shall ensure that each primary program site, regardless of location, is registered with the board pursuant to this rule. The current registration certificate shall be available at the primary program site for inspection and copying by the board, its representative, or any other authorized individual.

11.3(1) *Medical director-based service program.* In a medical director-based service program, CSA and DEA registrations shall be obtained for each primary program site. CSA and DEA registrations shall be obtained prior to procurement of any controlled substances for use in the service program. Separate registrations for program substations shall not be required. In a medical director-based service program, the CSA and DEA registrations shall be issued in the name of the service program, shall secondarily name the medical director, and shall be issued for the address of the service program's primary program site.

11.3(2) *Pharmacy-based service program.* In a pharmacy-based service program, the CSA registration shall be issued in the name of the service program and shall secondarily name the provider pharmacy. The CSA registration shall be issued for the address of the service program's primary program site and shall identify the pharmacist in charge of the provider pharmacy as the individual responsible for the controlled substances at the service program. A pharmacy-based service program that is owned by and physically located at the same address as an Iowa-licensed and -registered hospital may, but is not required to, obtain a separate registration.

11.3(3) *Combination pharmacy-based and medical director-based service program.* In a service program that is a combination of pharmacy-based and medical director-based and both the pharmacy and medical director provide controlled substances, each provider of controlled substances shall maintain a CSA registration with the board as provided by this rule. A medical director-based program shall also maintain a federal DEA registration as provided by this rule.

11.3(4) *Change of address of registered primary program site.* A registrant shall apply to change the address of the registered primary program site by submitting a completed application and fee as provided in 657—subrule 10.9(2).

11.3(5) *Discontinuation of medical director in a medical director-based service program.* If a medical director intends to terminate a written agreement with a service program pursuant to rule 657—11.5(124,147A,155A), the medical director shall provide written notification to the board at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309, pursuant to 657—subrule 10.11(6), to cancel the registration, including the effective date of the termination of the agreement. The registration certificate shall be returned to the board no later than ten days following the effective date of the termination of the agreement.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17; **ARC 3637C**, IAB 2/14/18, effective 3/21/18]

657—11.4(124,147A,155A) Written agreement. A signed, written agreement for the service program shall be maintained at the primary program site and be available for inspection and copying by the board, its representative, or any other authorized individual.

11.4(1) *Pharmacy-based service programs.* An Iowa-licensed pharmacy may enter into an agreement with a service program located in the state. The agreement with the service program shall establish that the service program is operating as an extension of the pharmacy with respect to the prescription drugs the pharmacy provides to the service program. The agreement shall be signed by the pharmacist in charge and the service director at the primary program site. A copy of this agreement shall be maintained at both the pharmacy and the primary program site while the agreement is in effect. Nothing in this rule prohibits more than one pharmacy from entering into an agreement with a service program provided that each pharmacy complies with all rules and regulations for a pharmacy-based service program, including maintenance of all required records specific to each pharmacy's drugs.

11.4(2) *Medical director-based service programs.* An Iowa-licensed physician may enter into an agreement with a service program located in the state. The agreement shall be signed by the medical director and the service director and be maintained at the primary program site while the agreement is in effect. The agreement shall include an attestation that the medical director agrees to abide by these rules.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.5(124,147A,155A) Termination of agreement. A written agreement may be terminated at the discretion of either the service program or the party or parties responsible for providing drugs to the service program. Written notification of such termination shall be provided to the other party at least 30 days prior to termination of the agreement.

11.5(1) *Pharmacy-based service programs.* Immediately upon discontinuation of a written agreement, all controlled substances shall be jointly inventoried by the pharmacist in charge of the pharmacy that owns the drugs and the service director or their respective designees. A record of this inventory shall be maintained at the pharmacy for two years from the date of the inventory and shall be available for inspection and copying by the board, its representative, or any other authorized individual. All drugs and devices that are the property of the pharmacy shall be immediately returned to the pharmacy.

11.5(2) *Medical director-based service programs.* Immediately upon discontinuation of a written agreement, all controlled substances shall be jointly inventoried by the medical director and the service director or their respective designees. A record of this inventory shall be maintained by the medical director for two years from the date of the inventory and shall be available for inspection and copying by the board, its representative, or any other authorized individual. All drugs and devices that are the property of the medical director shall be immediately returned to the medical director.

11.5(3) *Transfer of ownership.* If drugs in a service program are to be maintained under the ownership of a new pharmacy or medical director, such transfer of ownership shall be in compliance with 657—Chapter 10, 657—Chapter 17, and federal laws and regulations. Pursuant to rule 657—10.34(124,155A), the transfer of Schedule II controlled substances shall require an executed DEA Form 222.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 0342C**, IAB 10/3/12, effective 11/7/12; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.6(124,147A,155A) Registration required. Rescinded **ARC 3101C**, IAB 6/7/17, effective 7/12/17.
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11]

657—11.7 Reserved.

657—11.8(124,147A,155A) Identification. A log of employees who have access to prescription drugs and to records regarding procurement, storage, and administration of prescription drugs at the service program shall be maintained for two years and be available for inspection and copying by the board, its representative, or any other authorized individual. This log shall include each employee's printed name and signature, printed and signed initials or other unique identification used in service program records, and the employee's level of certification. A service program may maintain an electronic record of employee identification, including the employee's name, signature, unique identification used in the service program records, and level of certification. Such log shall be maintained at the primary program site for at least two years from the date of the employee's last date of employment with the service program and shall be available for inspection and copying by the board, its representative, or any other authorized individual.
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.9 Reserved.

657—11.10(124,147A,155A) Ownership of prescription drugs. All prescription drugs obtained for use in a service program shall be owned either by a pharmacy or by the medical director of the service program.

11.10(1) *Pharmacy-based service programs.* If the drugs are owned by a pharmacy or more than one pharmacy pursuant to these rules, the service program shall be considered a pharmacy-based service program and shall comply with these rules as they pertain to a pharmacy-based service program.

11.10(2) *Medical director-based service programs.* If the drugs are owned by the medical director, the service program shall be considered a medical director-based service program and shall comply with these rules as they pertain to a medical director-based service program.

11.10(3) *Combination pharmacy-based and medical director-based service programs.* If the service program has entered into both pharmacy-based and medical director-based service program agreements, both the pharmacy and the medical director shall retain separate ownership of the prescription drugs supplied and shall comply with these rules as applicable. The primary program site shall maintain a list that identifies which prescription drugs are owned and supplied by each responsible individual.

11.10(4) *Transfer of ownership.* Any transfer of ownership of prescription drugs and devices in a service program shall be in compliance with 657—Chapter 10, 657—Chapter 17, and federal laws and regulations.
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.11(124,147A,155A) Policies and procedures.

11.11(1) The service director, the medical director, and the responsible individual shall develop, implement, and adhere to written policies and procedures for the operation and management of the service program with respect to prescription drugs and devices in accordance with these rules. These policies and procedures shall be available for inspection and copying by the board, its representative, or any other authorized individual. The policies and procedures shall be periodically reviewed by the responsible individual, the medical director, and the service director and shall identify the frequency of the review. Documentation of the review shall be maintained.

11.11(2) The policies and procedures shall address, at a minimum, the following:

a. Storage of drugs at the primary program site and any program substations, including appropriate temperature controls , temperature monitoring and response when drugs are exposed to extreme temperatures pursuant to rule 657—11.13(124,147A,155A).

b. Storage of drugs at the primary program site and any program substations, including adequate security to prevent diversion and unauthorized access to drugs and records pursuant to rule 657—11.13(124,147A,155A).

c. Protocols for administration of drugs pursuant to rule 657—11.14(124,147A,155A).

d. Administration of drugs outside the parameters of written protocols pursuant to rule 657—11.15(124,147A,155A).

e. Service program personnel matters including, but not limited to:

(1) Access to prescription drugs and records, identifying level of access based upon employee certification level and scope of practice.

(2) Authority to administer drugs based upon employee certification level and scope of practice.

(3) Authority to order, receive, and distribute prescription drugs and devices.

(4) Initial training and periodic review of the medication policies and procedures.

(5) Identification of registered nurses not employed by the service program who are authorized by the medical director pursuant to Iowa Code section 147A.12 and pursuant to rules of the board of nursing to provide emergency care under the service program's protocol.

f. Process for the return of drugs pursuant to rule 657—11.22(124,147A,155A).

g. Out-of-date and adulterated drugs pursuant to rule 657—11.23(124,147A,155A).

h. Drug and device recalls pursuant to rule 657—11.24(124,147A,155A).

i. Monthly inspections pursuant to rule 657—11.20(124,147A,155A).

j. Record retention as described in rule 657—11.34(124,147A,155A) and other applicable rules of the board.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 0342C**, IAB 10/3/12, effective 11/7/12; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.12 Reserved.

657—11.13(124,147A,155A) Storage. Prescription drugs at primary program sites and program substations shall be stored in designated secure areas that are clean and free of debris, where temperature is appropriately controlled, and in a manner to protect identity and integrity.

11.13(1) *Temperature.* Each drug shall be stored within the temperature range required in the manufacturer labeling. The service program shall utilize a method to provide continuous temperature control or monitoring, such as a temperature indicator, which at a minimum identifies when the drugs have been exposed to extreme temperatures. The service program shall regularly, but at least weekly, verify and document verification that the drugs have not been exposed to extreme temperatures. Drugs that are subjected to extreme temperatures shall not be administered to patients and shall be quarantined and returned to the responsible individual for disposition. Extreme temperatures shall be defined as excessive heat greater than 40 degrees Celsius (104 degrees Fahrenheit) and, if the product requires protection from freezing temperatures, excessive cold less than -10 degrees Celsius (13 degrees Fahrenheit). Disposition of unusable drugs shall be in compliance with rule 657—11.32(124,147A,155A).

11.13(2) *Security.* The security of prescription drugs, records for such drugs, and patient records is the responsibility of the responsible individual and shall provide for the effective control against theft of, diversion of, or unauthorized access to drugs and records. Policies shall identify procedures that will utilize or require the signature of two service employees for each disbursement to ensure accountability for controlled substances.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.14(124,147A,155A) Protocols. Every service program shall utilize department protocols as the standard of care. The service program medical director may authorize an alternative protocol provided the directives are within the EMS provider's scope of practice , are within acceptable medical practice, and have been filed with the department. Prescription drugs shall be administered pursuant only to a written protocol or oral order by an authorized prescriber. A copy of the current protocol shall be provided to and maintained by the responsible individual, the service director, the primary program site and each

program substation and shall be available for inspection and copying by the board, its representative, or any other authorized individual.
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.15(124,147A,155A) Administration of drugs beyond the limits of a written protocol. Drugs may be administered beyond the limits of a written protocol provided that medical direction from an authorized prescriber has been obtained prior to administration. The authorization shall be recorded in the patient care report documenting the identity of the authorizing prescriber. If an agent of the authorized prescriber relayed the order, the identity of the prescriber's agent, including the agent's first and last names and title, shall also be recorded. The administration of a Schedule II controlled substance in a pharmacy-based service program shall be documented pursuant to rule 657—11.16(124,147A,155A).
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.16(124,147A,155A) Administration of Schedule II controlled substances—pharmacy-based service program. In a pharmacy-based service program, Schedule II controlled substances may be administered to patients under the care of a service program, including administration beyond the limits of a protocol when authorized pursuant to rule 657—11.15(124,147A,155A), provided that a signed order is delivered by the authorized prescriber to the pharmacy within seven days of the date administration was authorized. The signed order shall contain all of the prescription information required pursuant to Iowa Code section 155A.27. The patient care report may be accepted as the required signed order if the patient care report includes the required prescription information, including an original signature of the authorizing prescriber.
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.17 and **11.18** Reserved.

657—11.19(124,147A,155A) Patient care reports. Patient care reports shall be maintained at the primary program site or the program substation as required by the bureau and rule 657—11.34(124,147A,155A).
[**ARC 9786B**, IAB 10/5/11, effective 11/9/11]

657—11.20(124,147A,155A) Prescription drugs in service programs. Prescription drugs maintained by a service program shall be owned by an Iowa-licensed pharmacy or the service program's medical director.

11.20(1) *Pharmacy-based service programs.* The pharmacist in charge, the medical director, and the service director shall jointly develop, consistent with the service program's protocol, a list of drugs to be maintained for administration by the service program. The pharmacy shall maintain a current list of all prescription drugs including controlled substances that the pharmacy maintains at the primary program site and at any program substation.

a. Replenishment. The responsible individual, the service director, or designee may request that replenishment supplies of drugs be maintained at the primary program site provided that the pharmacy has been supplied with administration records justifying the order. Records of the administration of Schedule III, IV, and V controlled substances and noncontrolled prescription drugs provided to and maintained at the pharmacy shall include, at a minimum: the patient's name; the name, strength, dosage form, and quantity of the drug administered; and the date of administration. Records of the administration of Schedule II controlled substances provided to and maintained at the pharmacy shall consist of a written prescription including all of the prescription information required pursuant to Iowa Code section 155A.27 or the patient care report if the patient care report includes the required prescription information, including an original signature of the authorizing prescriber. A pharmacist shall verify the accuracy of every drug to be disbursed to the primary program site. Documentation of this verification shall be maintained within the pharmacy records.

b. Replenishment using automated medication distribution system (AMDS). A pharmacy utilizing an automated medication distribution system (AMDS) may authorize replenishment of the service program's drug supplies from the AMDS provided that a pharmacist verifies the drugs stocked in

the AMDS component before the drugs are removed from the pharmacy. Service program personnel authorized to remove drugs from the AMDS for restocking the service program's supplies shall be assigned a unique identification and access code for the purpose of accessing the AMDS. Access by authorized service program personnel shall be restricted to specific drug products authorized for use by the service program. A pharmacist shall, within 72 hours, review the access of and removal of drugs from the AMDS by service program personnel and shall maintain documentation of that review within the pharmacy records.

c. *Inspections.* The pharmacist in charge shall ensure the completion of a monthly inspection of all prescription drugs maintained by the pharmacy at the primary program site and any program substation. Inspection shall include the removal of outdated or adulterated drugs. All drugs removed from service program stock shall be returned to the pharmacy. Records of inspection shall be maintained for two years from the date of the inspection at the pharmacy. The pharmacist in charge may delegate the completion of the monthly inspection to another pharmacist, a pharmacist-intern, a certified pharmacy technician, or another designee of the pharmacist in charge.

11.20(2) *Medical director-based service programs.* The medical director and the service director shall jointly develop, consistent with the service program's protocol, a list of drugs to be maintained for administration by the service program. The medical director shall maintain a current list of all prescription drugs including controlled substances that the medical director maintains at the primary program site and at any program substation.

a. *Replenishment.* All drugs procured for administration in a medical director-based service program shall be obtained from an Iowa-licensed wholesaler, pharmacy, or authorized prescriber.

b. *Inspections.* The medical director shall ensure the completion of a monthly inspection of all prescription drugs maintained by the medical director at the primary program site and any program substation. Inspection shall include the removal of outdated or adulterated drugs. Records of inspection shall be maintained for two years from the date of the inspection at the primary program site or the program substation. The medical director may delegate the completion of the required inspections to the service director or other designee.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 0342C**, IAB 10/3/12, effective 11/7/12; **ARC 1307C**, IAB 2/5/14, effective 3/12/14; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.21 Reserved.

657—11.22(124,147A,155A) Return of drugs. Drugs that have been removed from service program stock shall be returned to the responsible individual. In a pharmacy-based service program, drugs returned from the service program to the pharmacy may be used by the pharmacy for subsequent dispensing or administration provided the drugs are not outdated or adulterated. Records of the return of prescription drugs shall be maintained by the responsible individual for two years from the date of the return.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.23(124,147A,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be administered beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from service program stock and quarantined until such drugs or devices are returned to the responsible individual for disposition.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.24(124,147A,155A) Product recall. Each service program shall have a procedure for removal from service program stock all drugs or devices subject to a product recall. The procedure shall include action appropriate to the direction or requirements of the recall.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.25 Reserved.

657—11.26(124,147A,155A) Controlled substances records.

11.26(1) *Records maintained.* Every inventory or other record required to be maintained under this chapter, 657—Chapter 10, or Iowa Code chapter 124 shall be maintained at the primary program site or the program substation and by the pharmacy if the service program is pharmacy-based. All required records shall be available for inspection and copying by the board, its representative, or any other authorized individual for at least two years from the date of such record. Controlled substances records shall be maintained in a readily retrievable manner. Schedule II controlled substances records shall be maintained separately from all other records of the registrant.

11.26(2) *Receipt and disbursement records in medical director-based service programs.* Any pharmacy or other authorized registrant that provides controlled substances for a medical director-based service program shall provide to the service program a record of the disbursement and maintain a record of the disbursement pursuant to rule 657—10.16(124). The service program shall retain the record on which an authorized individual shall sign and record the actual date of receipt. The record 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 whom 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 whom the substances were distributed; and

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 whom the substances were distributed for disposal, if appropriate.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17; **ARC 3637C**, IAB 2/14/18, effective 3/21/18]

657—11.27(124,147A,155A) Ordering Schedule II controlled substances—medical director-based service programs. Except as otherwise provided by 657—subrule 10.17(2) and under federal law, a DEA Form 222, preprinted with the address of the primary program site, is required to be maintained at the primary program site for the acquisition of each supply of a Schedule II controlled substance. The order form shall be executed only by the medical director named on the order form or by an authorized signer designated pursuant to a properly executed power of attorney. A DEA Form 222 shall be dated and signed as of the date the order is submitted for filling. A medical director or authorized signer shall not pre-sign a DEA Form 222 for subsequent completion. All Schedule II order forms shall be maintained at the primary program site and shall be available for inspection and copying by the board, its representative, or any other authorized individual for a period of two years from the date of the record.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17; **ARC 3637C**, IAB 2/14/18, effective 3/21/18]

657—11.28 Reserved.

657—11.29(124,147A,155A) Schedule II controlled substances perpetual inventory. Each service program located in Iowa that administers Schedule II controlled substances shall maintain a perpetual inventory for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained at the primary program site and shall be available for inspection and copying by the board, its representative, or any other authorized individual for a period of two years from the date of the record.

11.29(1) *Record.* The perpetual inventory record may be maintained in a hard-copy or 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. A record entry, once recorded, shall not be

changed; any adjustments or corrections shall require entry of a separate record as provided in subrule 11.29(3).

11.29(2) *Information included.* The perpetual inventory record shall identify all receipts and disbursements of Schedule II controlled substances by drug name or by National Drug Code (NDC), including each patient administration, wastage, and return of a drug to the responsible individual. The record of receipt shall also identify the source of the drug, the strength and dosage form, the quantity, the date of receipt, and the name or unique identification of the individual verifying receipt of the drug. The disbursement record shall identify where or to whom the drug is disbursed or administered, the strength and dosage form, the quantity, the date of disbursement or administration, and the name or unique identification of the individual responsible for the disbursement. Receipts and disbursements shall be recorded in the perpetual inventory as soon as practicable but no later than 24 hours after the receipt, disbursement, or administration.

11.29(3) *Adjustments or corrections to the record.* Any adjustments or corrections made to the perpetual inventory shall include the identity of the person making the adjustment or correction and the reason for the adjustment or correction.

11.29(4) *Reconciliation.* The pharmacist in charge or designee in a pharmacy-based service program, or the medical director or designee in a medical director-based service program, shall be responsible for reconciling the perpetual inventory record of all Schedule II controlled substances with the physical inventory at least monthly. Any discrepancy shall be reported within 24 hours of the discovery to the responsible individual for investigation.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.30(124,147A,155A) Controlled substances annual inventory. An accurate inventory shall be taken annually of all controlled substances maintained at the primary program site and program substations. Controlled substances in a pharmacy-based service program shall be included in the pharmacy's annual controlled substances inventory. The inventory record shall identify the drug name or National Drug Code (NDC) and the exact quantity under the control of the service program including drugs in replenishment stock and quarantined stock. The inventory record shall contain the date and time the inventory was taken and the printed name and signature of the individual or individuals responsible for the inventory record. Records of the inventory shall be maintained pursuant to rule 657—11.34(124,147A,155A).

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.31 Reserved.

657—11.32(124,147A,155A) Disposition of controlled substances. Disposition of controlled substances shall be pursuant to the requirements of this rule, rule 657—11.29(124,147A,155A), 657—Chapter 10, and federal regulations. Records shall be maintained at the primary program site and, if the service program is pharmacy-based, records shall be maintained at the pharmacy.

11.32(1) *Outdated, adulterated, or unwanted supply.* Controlled substances shall not be destroyed except as provided in subrule 11.32(2). Any drug that requires disposition shall be quarantined until the drug can be returned to the responsible individual. The responsible individual shall ensure the proper disposition of controlled substances according to the following procedures:

a. The responsible individual shall utilize the services of a DEA-registered and Iowa-licensed disposal firm (reverse distributor), or

b. The responsible individual shall utilize such other means determined and approved by the board.

11.32(2) *Administration wastage.* 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 may be destroyed or otherwise disposed of by the administering service program personnel, the medical director, or a pharmacist. Any wastage of a controlled substance shall be conducted in the presence of a responsible adult witness who is an authorized service program employee, a member of the professional or technician pharmacy staff, or a licensed health care professional. A written or electronic record of controlled substance wastage shall be created and maintained at the primary program site and,

if the service program is pharmacy-based, at the pharmacy, for a minimum of two years following the disposition. The record shall include the signatures or other unique identification of the witness and of the individual destroying or otherwise disposing of the wastage of the controlled substance and shall identify the following:

a. The controlled substance wasted;

b. The date of destruction or other disposition;

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; and

e. If either individual involved in the wastage is not identified in the service program identification log, the legibly printed first and last names and title of the individual.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

657—11.33(124,147A,155A) Report of loss or theft of controlled substance. Upon suspicion of any loss or theft of a controlled substance, the service director shall immediately notify the responsible individual. The responsible individual shall provide notice and reporting as required in rule 657—10.21(124).

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17; **ARC 3637C**, IAB 2/14/18, effective 3/21/18]

657—11.34(124,147A,155A) Records. If a service program includes a primary program site and one or more program substations, each record shall identify the specific location to which it applies. Records regarding service program substation activities, including drug supply and administration records, may be maintained at the primary program site but shall clearly identify the program substation to which the records apply. All records regarding prescription drugs and devices in a service program shall be maintained for two years from the date of the activity or record and be available for inspection and copying by the board, its representative, or any other authorized individual.

[**ARC 9786B**, IAB 10/5/11, effective 11/9/11; **ARC 3101C**, IAB 6/7/17, effective 7/12/17]

These rules are intended to implement Iowa Code chapter 147A and Iowa Code sections 124.301 and 155A.13.

[Filed 5/25/79, Notice 4/4/79—published 6/13/79, effective 7/18/79]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 9/23/93, Notice 5/26/93—published 10/13/93, effective 11/17/93]
[Filed 6/24/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 9/8/99, Notice 6/2/99—published 10/6/99, effective 11/10/99]
[Filed 8/14/02, Notice 6/12/02—published 9/4/02, effective 10/9/02]
[Filed 12/22/04, Notice 11/10/04—published 1/19/05, effective 2/23/05]
[Filed ARC 9786B (Notice ARC 9528B, IAB 6/1/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0342C (Notice ARC 0172C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 1307C (Notice ARC 1039C, IAB 10/2/13), IAB 2/5/14, effective 3/12/14]
[Filed ARC 3101C (Notice ARC 2904C, IAB 1/18/17), IAB 6/7/17, effective 7/12/17]
[Filed ARC 3637C (Notice ARC 3370C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 21
ELECTRONIC DATA AND AUTOMATED SYSTEMS IN PHARMACY PRACTICE

657—21.1(124,155A) Purpose and scope. The purpose of this chapter is to provide the minimum standards for the utilization of electronic data and automated systems in the practice of pharmacy and shall apply to all pharmacies located in Iowa.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.2(124,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Automated data processing system" means an application that is used for prescription, patient, drug, and prescriber information; installed on a pharmacy's computer or server; and controlled by the pharmacy.

"Automated medication distribution system" or *"AMDS"* includes, but is not limited to, an automated device or series of devices operated by an electronic interface with one or more computers that is used to prepare, package, or dispense specified dosage units of drugs for administration or dispensing. "AMDS" does not include electronic storage devices that do not have an electronic interface with one or more computers of the pharmacy.

"DEA" means the U.S. Department of Justice, Drug Enforcement Administration.

"Electronically prepared prescription" means a prescription that is generated utilizing an electronic prescription application.

"Electronic device" means an electronic, mechanical, or other device which is used to intercept communications and includes but is not limited to network, file and print servers; desktop workstations; laptop computers; tablets; mini-computers; smart phones; and similar devices.

"Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

"Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on a prescriber's computers and servers where access and records are controlled by the prescriber.

"Electronic signature" means a confidential personalized digital key, code, number, or other method used for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message, and indicates the person's approval of the information contained in the transmission.

"Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

"Facsimile transmission" or *"fax transmission"* means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes but is not limited to transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer, or printer.

"Intermediary" means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

"Pharmacist verification" or *"verified by a pharmacist"* means the accuracy of a prescription drug is verified by a pharmacist, pharmacist-intern, or technician in an approved tech-check-tech program.

"Prescription drug order" or *"prescription"* means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy, regardless of whether the communication is oral, electronic, via facsimile, or in printed form.

"Readily retrievable" means that hard-copy or electronic records can be separated out from all other records within 48 hours of a request from the board or other authorized agent.

"Written prescription" means a prescription that is created on paper, a prescription that is electronically prepared and printed, or a prescription that is electronically prepared and transmitted from the prescriber's electronic device to a pharmacy via facsimile. A written prescription for a controlled substance shall be manually signed by the prescriber in compliance with federal and state laws, rules, and regulations.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.3(124,155A) System security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system, computer, or electronic device utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Authentication credentials shall be securely maintained by the individual to whom the credentials are issued and shall not be shared with or disclosed to any other individual. Once a drug or device has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist. An automated data processing system used for the receipt and processing of electronic transmissions from a prescriber's electronic prescription application shall comply with DEA requirements relating to electronic prescriptions and shall be certified compliant with DEA regulations.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.4 Reserved.

657—21.5(124,155A) Automated data processing systems. An automated data processing system may be used, subject to the requirements contained in this rule, for the storage and retrieval of prescription, patient, prescriber and drug data as well as data relating to the pharmacy staff utilization of the system.

21.5(1) *Electronic storage of hard-copy prescriptions.* A pharmacy that maintains an electronic copy of an original hard-copy prescription for a noncontrolled substance shall retain, in a readily retrievable format, the original hard-copy prescription as required in rule 657—6.8(155A) but shall be exempt from the requirement to record on the original hard-copy prescription the date and unique identification number of the prescription.

21.5(2) *Data retrievable and printable.* Any automated data processing system shall be capable of immediate retrieval (via computer monitor or hard-copy printout) of, at a minimum, any prescription, patient, prescriber, and drug data as well as data relating to pharmacy staff utilization of the system.

21.5(3) *Auxiliary procedure for system downtime.* A pharmacy utilizing an automated data processing system shall have a procedure that will maintain security and confidentiality of all data as well as ensure the legal dispensing of any prescription drug order in the event the system experiences downtime.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.6(124,155A) Electronic prescription applications. A prescriber may initiate and authorize a prescription drug order utilizing an electronic prescription application that has been determined to maintain security and confidentiality of patient information and records and, if prescribing controlled substances via an electronic prescribing system, certified compliant with DEA regulations for electronic prescribing of controlled substances. The prescription drug order shall contain all information required by Iowa Code sections 155A.27 and 147.107(5). The receiving pharmacist shall be responsible for verifying the authenticity of an electronically prescribed prescription pursuant to rule 657—8.19(124,126,155A). A prescription that is electronically generated may be transmitted to a pharmacy via electronic or facsimile transmission or printed in hard-copy format for delivery to the pharmacy. A prescription that is transmitted by a prescriber's agent via electronic or facsimile transmission shall include the first and last names and title of the agent responsible for the transmission.

21.6(1) *Electronic transmission.* A prescription prepared pursuant to this rule may be transmitted to a pharmacy via electronic transmission. A pharmacy shall be certified compliant with DEA

regulations relating to electronic prescriptions prior to electronically receiving prescriptions for controlled substances. The electronic record shall serve as the original record and shall be maintained for two years from the date of last activity on the prescription. Any annotations shall be made and retained on the electronic record.

a. An electronically prepared and transmitted prescription that is printed following transmission shall be clearly labeled as a copy, not valid for dispensing.

b. The authenticity of a prescription transmitted via electronic transmission between a DEA-certified electronic prescription application and a DEA-certified electronic automated data processing system shall be deemed verified by virtue of the security processes included in those applications.

c. A pharmacy shall ensure that no intermediary has the ability to change the content of the prescription drug order or compromise its confidentiality during the transmission process. The electronic format of the prescription drug order may be changed by the intermediary to facilitate the transmission between electronic applications as long as the content of the prescription drug order remains unchanged.

d. In addition to the information requirements for a prescription, an electronically transmitted prescription shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state laws, rules, or regulations.

e. If the transmission of an electronic prescription fails, the prescriber may print the prescription, manually sign the printed prescription, and deliver the prescription to the pharmacy via facsimile transmission in accordance with subrule 21.6(2).

21.6(2) *Printed (hard-copy) prescriptions.* An electronically generated prescription may be printed in hard-copy format for facsimile transmission or delivery to the pharmacy.

a. A prescription for a controlled substance shall include the prescriber's manual signature. Printed or hard-copy prescriptions for Schedule II controlled substances shall not be transmitted to a pharmacy via facsimile transmission, except as authorized in rule 657—21.7(124,155A).

b. If the prescriber authenticates a prescription for a noncontrolled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper. Security features of the paper shall ensure that prescription information is not obscured or rendered illegible when transmitted via facsimile or when scanned into an electronic record system.

c. If the facsimile transmission of a printed prescription is a result of a failed electronic transmission, the facsimile shall indicate that it was originally transmitted to the named pharmacy, the date and time of the original electronic transmission, and the fact that the original transmission failed.

[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.7(124,155A) Facsimile transmission of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, including Schedule II controlled substances only as provided in this rule, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The means of transmission via facsimile shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription shall serve as the original record, except as provided in subrule 21.7(1), shall be maintained for a minimum of two years from the date of the last activity on the prescription, and shall contain all information required by Iowa Code sections 155A.27 and 147.107(5), including the prescriber's signature. If the prescription is transmitted by an agent of the prescriber, the facsimile transmission shall include the first and last names and title of the agent responsible for the transmission. The pharmacist shall be responsible for verifying the authenticity of the prescription as to the source of the facsimile transmission.

21.7(1) *Schedule II controlled substances—emergency situations.* A pharmacist may, in an emergency situation as defined in 657—subrule 10.26(1), dispense a Schedule II controlled substance pursuant to a facsimile transmission to the pharmacy of a written, signed prescription from the prescriber or the prescriber's agent pursuant to the requirements of rule 657—10.26(124). The facsimile shall serve as the temporary written record required by 657—subrule 10.26(2).

21.7(2) *Schedule II controlled substances—compounded injectable.* A prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a prescriber or the prescriber's agent to a pharmacy via facsimile.

21.7(3) *Schedule II controlled substances—long-term care facility patients.* A prescription for any Schedule II controlled substance for a resident of a long-term care facility, as "long-term care facility" is defined in rule 657—23.1(155A), may be transmitted by the prescriber or the prescriber's agent to a pharmacy via facsimile. The prescription shall identify that the patient is a resident of a long-term care facility.

21.7(4) *Schedule II controlled substances—hospice patients.* A prescription for any Schedule II controlled substance for a patient in a hospice program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the prescriber or the prescriber's agent to the pharmacy. The prescription shall identify that the patient is a hospice patient.

[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.8 and **21.9** Reserved.

657—21.10(124,155A) Automated medication distribution system (AMDS). Any pharmacy that utilizes an AMDS shall comply with these rules in addition to all applicable federal and state laws, rules, and regulations.

21.10(1) *Policies and procedures.* Pursuant to the requirements regarding policies and procedures in 657—subrule 8.3(5), each pharmacy utilizing an AMDS shall have policies and procedures that address all aspects of the operation of the AMDS to include, at a minimum:

a. Access to drugs and patient information,

b. Pharmacy personnel training in the proper operation of the AMDS,

c. Methods to ensure accurate stocking of the AMDS pursuant to subrule 21.10(2),

d. Confidentiality of patient information,

e. Routine and preventative maintenance of the AMDS according to manufacturer recommendations,

f. Packaging and labeling of prescription drugs loaded into or dispensed from the AMDS that is in compliance with federal and state laws, rules, and regulations, and

g. Security and control of the prescription drugs maintained and utilized in the AMDS to include:

(1) Drug loading, storage, and records.

(2) Drugs removed from system components but not used.

(3) Inventory.

(4) Cross contamination.

(5) Lot number control.

(6) Wasted or discarded drugs.

(7) Controlled substances.

21.10(2) *Stocking the AMDS.* The pharmacy shall have adequate procedures in place to ensure the accurate stocking of drugs into an AMDS using barcode scanning technology. Only a pharmacy technician, pharmacist-intern, or pharmacist shall be allowed to participate in the stocking of the AMDS.

21.10(3) *Pharmacist verification of drugs dispensed from AMDS.*

a. When an AMDS only dispenses drugs that were prepackaged and verified by a pharmacist prior to being stocked in the AMDS and there was no further manipulation of the drug or package other than affixing a patient-specific label, such drugs shall not require additional pharmacist verification prior to administration or dispensing to the patient or authorized representative.

b. When a drug is stocked in an AMDS and undergoes further manipulation, such as counting and packaging, such drugs shall require pharmacist verification prior to dispensing to the patient. Such verification shall be documented.

21.10(4) *Placement of AMDS.*

a. An AMDS placed outside a pharmacist's direct supervision shall only dispense pharmacist-verified packages in compliance with paragraph 21.10(3)*"a."*

b. An AMDS that manipulates, including but not limited to counting, packaging, or labeling, prescription drugs for subsequent patient dispensing shall only be utilized in a pharmacy under the direct supervision of a pharmacist, except in an approved telepharmacy pursuant to 657—Chapter 13.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

657—21.11(124,155A) Pharmacist verification of controlled substance fills—daily printout or logbook. The individual pharmacist who makes use of the pharmacy prescription application shall provide documentation of the fact that the fill information entered into the pharmacy prescription application each time the pharmacist fills a prescription order for a controlled substance is correct. If the pharmacy prescription application provides a hard-copy printout of each day's controlled substance prescription order fill data, that printout shall be verified, dated, and signed by each individual pharmacist who filled a controlled substance prescription order. Each individual pharmacist must verify that the data indicated is correct and sign this document in the same manner as the pharmacist would sign a check or legal document (e.g., J. H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order fill data shall be generated by and available at each pharmacy using a computerized pharmacy prescription application within 48 hours of the date on which the prescription was dispensed. The printout shall be verified and signed by each pharmacist involved with such dispensing. In lieu of preparing and maintaining printouts as provided above, the pharmacy may maintain a bound logbook or separate file. The logbook or file shall include a statement signed each day by each individual pharmacist involved in each day's dispensing that attests to the fact that the prescription information entered into the pharmacy prescription application that day has been reviewed by the pharmacist and is correct as shown. Pharmacist statements shall be signed in the manner previously described. The logbook or file shall be maintained at the pharmacy for a period of two years after the date of dispensing.
[**ARC 3640C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 147.107, 155A.27, 155A.33, and 155A.35.

[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 7/31/98, Notice 5/20/98—published 8/26/98, effective 9/30/98]
[Filed 8/14/02, Notice 6/12/02—published 9/4/02, effective 10/9/02]
[Filed 10/22/04, Notice 3/31/04—published 11/10/04, effective 12/15/04]
[Filed 6/2/05, Notice 1/19/05—published 6/22/05, effective 7/27/05]
[Filed 6/2/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]
[Filed 2/7/07, Notice 10/25/06—published 2/28/07, effective 4/4/07]
[Filed 8/3/07, Notice 6/20/07—published 8/29/07, effective 10/3/07]
[Filed ARC 7636B (Notice ARC 7448B, IAB 12/31/08), IAB 3/11/09, effective 4/15/09]
[Filed ARC 8171B (Notice ARC 7910B, IAB 7/1/09), IAB 9/23/09, effective 10/28/09]
[Filed ARC 9912B (Notice ARC 9671B, IAB 8/10/11), IAB 12/14/11, effective 1/18/12]
[Filed ARC 2639C (Notice ARC 2498C, IAB 4/13/16), IAB 8/3/16, effective 9/7/16]
[Filed ARC 3345C (Notice ARC 3136C, IAB 6/21/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 3640C (Notice ARC 3329C, IAB 9/27/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 28
AGENCY PROCEDURE FOR RULE MAKING

657—28.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board of pharmacy, hereinafter referred to as "board," are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.2(17A) Definitions.

"Administrative rules review committee" or *"ARRC"* means a bipartisan standing committee composed of five senators and five representatives that meets on a regular basis for the purpose of selectively reviewing rules whether proposed or in effect.

"ARC" means the governor's administrative rules coordinator.

"ARC number" means the identification number assigned by the ARC to each rule making document.

"Iowa Administrative Bulletin" or *"IAB"* is the official biweekly publication that contains the text or texts of notices of intended action and of all adopted rules.

"Notice of Intended Action" means a published notice of the board's intent to adopt, amend, or rescind one or more rules pursuant to Iowa Code section 17A.4(1).
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.3(17A) Solicitation of comments before notice. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action, solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.4(17A) Public rule-making docket. Proposed rule making is made available for inspection and comment by the public through the websites identified in this rule.

28.4(1) *Proposed rule making.* Each proposed rule making is published in the Iowa Administrative Bulletin and can be found on the state's administrative rules website at rules.iowa.gov. Each proposed rule making is identified by agency and by ARC number and shall include information on the opportunity to directly submit public comments, suggestions, and objections regarding the proposed rule making, including the deadline for submission of such comments.

28.4(2) *Rules tracker.* The progress and current status of any proposed rule making may be viewed at www.legis.iowa.gov/law/administrativerules/tracker.

28.4(3) *Board notification of proposed rule making.* Persons desiring to receive copies of future Notices of Intended Action may subscribe on the board's website at pharmacy.iowa.gov.

28.4(4) *Public participation—written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit written comments on the proposed rule. Such written submissions shall identify the proposed rule to which they relate and shall be submitted to the Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or to the person designated in the Notice of Intended Action.

28.4(5) *Public participation—public hearings.* The board may, at any time, schedule a public hearing in accordance with rule 657—28.4(17A) on a proposed rule. The board shall schedule a public hearing on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the ARRC, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request shall contain the following information:

a. A request by one or more individual persons shall include the printed name, signature, address, telephone number, and email address of each person.

b. A request by an association shall contain a statement that the association has at least 25 members and include the printed name, signature, address, telephone number, and email address of an officer or designee of the association.

c. A request by an agency or governmental subdivision shall contain the printed name, signature, address, telephone number, and email address of an official having authority to act on behalf of the entity.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.5(17A) Public hearing proceedings.

28.5(1) *Applicability.* This rule applies only to those public hearings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b."*

28.5(2) *Scheduling and notice.* A public hearing on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the IAB. That notice shall also identify the proposed rule by ARC number and citation to the IAB.

28.5(3) *Presiding officer.* The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

28.5(4) *Conduct of hearing.* At a public hearing on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the hearing and indicate the general subject of their presentations. At the hearing, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Hearings shall be open to the public and shall be recorded by stenographic or electronic means.

a. At the beginning of the public hearing, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the hearing. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

b. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

c. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

d. The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

e. Physical and documentary submissions presented by participants in the hearing shall be submitted to the presiding officer. Such submissions become the property of the board.

f. The hearing may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

g. Participants in a public hearing shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in a hearing may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

h. The presiding officer in a hearing may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

28.5(5) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

28.5(6) *Accessibility.* The board shall schedule public hearings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board, telephone (515)281-5944, in advance to arrange access or other needed services.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.6(17A) Regulatory analyses.

28.6(1) *Definition of small business.* A "small business" is defined in Iowa Code section 17A.4A(8)*"a."*

28.6(2) *Regulatory analysis—economic impact.* The board shall issue a regulatory analysis of a proposed board rule in response to a written request from the ARC or the ARRC. The regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A.

28.6(3) *Regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed board rule in response to a written request from one of the following. The regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A.

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address, and telephone number of not less than 25 small businesses it represents.

28.6(4) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the board shall adhere to the time lines described in Iowa Code section 17A.4A.

28.6(5) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

28.6(6) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

28.6(7) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

28.6(8) *Jobs impact statement.* Pursuant to Iowa Code section 17A.4B, the board shall include in the preamble of each rule making a jobs impact statement, unless such statement is waived by the ARC. The board may seek and shall accept public comments and information from stakeholders relating to a jobs impact statement.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.7(17A,25B) Fiscal impact statement.

28.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

28.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.8(17A) Time and manner of rule adoption.

28.8(1) *Time of adoption.* At least 35 days following publication of a Notice of Intended Action, the board may adopt a rule or terminate the rule making. Within 180 days after the date of publication of the notice or the deadline for public comments, whichever is later, the board shall adopt a rule or terminate the proceeding. Subsequent actions shall be published in the Iowa Administrative Bulletin.

28.8(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, or any memorandum summarizing such oral submissions, and any regulatory analysis, jobs impact statement, or fiscal impact statement issued in that rule-making proceeding.

28.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

28.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

28.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

28.9(3) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.10(17A) Exemptions from public rule-making procedures.

28.10(1) *Emergency-adopted rule.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, and with the prior approval of the ARRC and ARC, or if a statute so provides, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

28.10(2) *Notice of emergency-adopted rule.* The board may, at any time, begin a standard rule-making proceeding for the adoption of a rule that is emergency-adopted without notice pursuant to subrule 28.10(1) and that is identical or similar to a rule it adopts in reliance upon subrule 28.10(1). After notice commenced pursuant to this subrule, the board may either readopt the rule it emergency-adopted without benefit of all usual procedures on the basis of subrule 28.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.11(17A) Concise statement of reasons. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule pursuant to Iowa Code section 17A.4(2). Requests for such a statement shall be in writing and be delivered to the Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The request shall indicate

whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.12(17A) Style and form. In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.13(17A) Board rule-making record.

28.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

28.13(2) *Contents.* The board rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based;

b. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

c. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

d. A copy of any regulatory analysis or fiscal impact statement;

e. A copy of the rule and any concise statement of reasons prepared for that rule;

f. All petitions for amendment of, or repeal or suspension of, the rule;

g. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any board response to that objection;

h. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

i. A copy of any executive order concerning the rule.

28.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

28.13(4) *Maintenance of record.* The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action. The board shall maintain a record of significant written criticism as described in paragraph 28.13(2)*"g," "h,"* or *"i,"* for a period of not less than five years from the date of the written criticism.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.14(17A) Filing of rules. The board shall file each rule the board adopts with the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.
[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.15(17A) Effectiveness of rules prior to publication.

28.15(1) *Grounds.* The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the

effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

28.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b,"* the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication.

[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

657—28.16(17A) Review by board of rules. Over each five-year period of time beginning July 1, 2012, the board shall conduct an ongoing and comprehensive review of all the board's rules pursuant to Iowa Code section 17A.7(2). The purpose of the review is to identify and eliminate all rules that are outdated, redundant, or inconsistent or incompatible with statute, other board rules, or rules of other agencies. When the board's five-year review of its rules is completed, the board shall summarize the results and provide the summary to the ARC and the ARRC.

[**ARC 3641C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code sections 17A.1 through 17A.9A.

[Filed 5/21/92, Notice 4/1/92—published 6/10/92, effective 7/15/92]

[Filed 4/22/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]

[Filed emergency 10/6/99—published 11/3/99, effective 10/11/99]

[Filed ARC 3641C (Notice ARC 3373C, IAB 10/11/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 2
RULES OF PRACTICE
[Prior to 7/13/88, see Secretary of State[750], Ch 7]

721—2.1(17A) Forms used. Copies of all forms are kept in the main office and may be inspected by anyone during the working day.

721—2.2(17A) Filing complaints. All complaints or objections relating to any matter involving the secretary of state's office shall be in writing addressed to the secretary of state. The complaint or objection may be either mailed or hand delivered. Oral complaints or objections will be handled in an informal procedure by the secretary or secretary's designee with the complainant at the convenience of both parties.

721—2.3(9,631) Payment for services. The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

2.3(1) The secretary of state may prescribe and furnish forms for the purpose of authorizing a charge to be made upon an account. The secretary of state may refuse to charge an account for service requested without the appropriate form.

2.3(2) Application for account. Application for an account shall be made upon a form prescribed and furnished by the secretary of state. The account holder is subject to the terms and conditions contained in the application. The secretary of state reserves the right to adopt changes to the terms and conditions of the account. The secretary of state reserves the right to close a delinquent account.

2.3(3) Account holders will receive a monthly statement of account. The statement will include, for each transaction, the date and amount of the transaction. A transaction may include more than one filing fee.

2.3(4) Payment in full is due within 15 days of the date of the statement of account. An account is considered delinquent after the expiration of 30 days from the date of the statement of account. Interest and finance charges may be assessed on delinquent accounts in accordance with Iowa Code chapter 535.

2.3(5) An annual fee of $100 shall be paid by an account holder for the privilege of maintaining an account. The annual fee shall cover a 12-month period measured from the first day of the month in which the account is approved by the secretary of state. An account that is not delinquent one month prior to the expiration of the annual period shall be renewed upon the payment of the annual fee. The secretary of state shall charge the annual fee to the account on the statement of the account for the monthly period prior to the expiration date. The annual fee shall be used for the purpose of offsetting the expenses incurred by the secretary of state in maintaining the account. Upon the expiration of the technology modernization fund in Iowa Code section 9.4A, as created by 2017 Iowa Acts, Senate File 516, section 23, the fee will revert to the amount authorized prior to July 1, 2017. Funds generated by the increase of this fee shall be exclusively used for improving business services technology.

2.3(6) Accounts maintained by the secretary of state prior to July 1, 1989, shall be terminated at the close of business on June 30, 1989, unless the holder of the account complies with subrule 2.3(5) and authorizes the secretary of state to continue the account by filing a renewal application on a form prescribed and furnished by the secretary of state.

2.3(7) The secretary of state shall assess a fee of $10 for the receipt of a document filed under Iowa Code section 631.4(1)*"d."*

[**ARC 0804C**, IAB 6/26/13, effective 7/31/13; **ARC 3467C**, IAB 11/22/17, effective 12/31/17; **ARC 3643C**, IAB 2/14/18, effective 3/21/18]

721—2.4(17A) Examination and preservation of records.

2.4(1) "Lawful custodian" shall include the secretary of state and staff personnel authorized by the secretary of state.

2.4(2) No person, except the lawful custodian, shall place a mark upon, or in any manner damage, deface, alter, or destroy a public record.

2.4(3) Examination and copying of public records shall be conducted under the supervision of the lawful custodian.

2.4(4) Public records shall not be removed from the offices of the secretary of state, except for the purposes of:

a. Complying with a subpoena duces tecum,

b. Microfilming the records by the department of general services, or

c. Retaining and preserving the public records pursuant to Iowa Code chapter 304.

d. Complying with Iowa Code section 2B.10.

721—2.5(17A) Telecopier service. The secretary of state may provide copies of official records by telecopier to persons who hold an account authorized by the secretary of state pursuant to rule 721—2.3(17A). In addition to any fee imposed by statute for reproduction of the record, the secretary of state shall charge to the account a fee of $1 per page to offset the cost of the telecopier service.

These rules are intended to implement Iowa Code chapters 17A, 490, 491, 497, 498, 499, 504, and 554 (Article 9) and 2017 Iowa Acts, Senate File 516, section 23.

[Filed 10/8/75, Notice 8/25/75—published 10/20/75, effective 11/24/75]
[Filed 11/30/83, Notice 10/12/83—published 12/21/83, effective 1/25/84]
[Filed emergency 7/3/84—published 8/1/84, effective 7/3/84]
[Filed 12/14/84, Notice 8/1/84—published 1/2/85, effective 2/6/85]
[Filed 6/23/88, Notice 5/18/88—published 7/13/88, effective 8/17/88]
[Filed 4/28/89, Notice 3/22/89—published 5/17/89, effective 6/21/89]
[Filed emergency 6/8/01—published 6/27/01, effective 7/1/01]
[Filed ARC 0804C (Notice ARC 0729C, IAB 5/1/13), IAB 6/26/13, effective 7/31/13]
[Filed ARC 3467C (Notice ARC 3320C, IAB 9/27/17), IAB 11/22/17, effective 12/31/17]
[Filed ARC 3643C (Notice ARC 3518C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345]
under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97, see Job Service Division[345],
renamed Department of Workforce Development by 1996 Iowa Acts, chapter 1186]

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EMPLOYER'S CONTRIBUTION AND CHARGES

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 3]

871—23.1(96) Definitions.

23.1(1) *Accounts.*

a. Benefit payment account. An account maintained in the unemployment compensation fund in which are recorded (1) amounts transferred from the unemployment trust fund in the United States treasury, and receipts from other sources, and (2) amounts of benefits paid.

b. Employer rating account. An account of an employer which is maintained by the department for the purpose of reporting wages and recording contributions or reimbursements for that employer.

c. Clearing account. An account maintained in the unemployment compensation fund in which are recorded all amounts payable under Iowa Code chapter 96, including those to be transferred to (1) the unemployment trust fund, (2) the special employment security contingency fund, (3) the administrative contribution surcharge fund, and (4) the temporary emergency surcharge fund. Employer refunds are issued from this account.

d. Balancing account. An account set up to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

23.1(2) *Average annual taxable payroll.* The average of the total amount of taxable wages paid by an employer for insured work during the five periods (three or two periods for governmental contributory employers) of four consecutive calendar quarters immediately preceding the computation date.

23.1(3) *Calendar quarter.* The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 of each year.

23.1(4) *Computation date.* The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

23.1(5) *Employer's contribution and payroll report.* An employer's quarterly report of the wages paid to individual workers, the total and taxable wages paid and the amount of contributions due to a state unemployment insurance fund.

23.1(6) *Contributions.* Payments required by a state employment security law to be made to the state unemployment fund by reason of insured work but does not include reimbursement payments of nonprofit organizations or governmental entities in lieu of contributions.

23.1(7) *Contributor rate.* The percent constituting the rate at which the employer's payroll is taxed.

23.1(8) *Employer.* An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(16).)

23.1(9) *Experience.* An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

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23.1(11) Reserved.

23.1(12) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(13) Reserved.

23.1(14) *Federal unemployment tax.* The tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

23.1(15) *Federal Unemployment Tax Act.* Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

23.1(16) *Federal unemployment tax return.* A report by an employer to the Internal Revenue Service of the amount of federal unemployment tax due and payable with respect to wage payments to workers during the calendar year.

23.1(17) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(18) *Funds.*

a. *Administrative contribution surcharge fund.* A special fund in the state treasury, established by state law, as a repository for an employer surcharge levied to meet the operational cost of certain state workforce development offices. Referred to in subrule 23.40(2).

b. *Administrative funds.* Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

c. *Contingency fund.* An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

d. *Employment security administration fund.* A special fund in the state treasury, established by state law, in which are deposited moneys granted by the United States Department of Labor, manpower administration and moneys from other sources, for the purpose of paying the cost of administering the state workforce development program.

e. *Special employment security contingency fund.* A special fund in the state treasury, established by state law, for moneys received from employers in payment of interest and penalties on delinquent contributions and reports.

f. *Temporary emergency surcharge fund.* A special fund in the state treasury, established by state law, for use in the event an employer surcharge is levied to pay interest on a federal government loan to the unemployment compensation fund. Referred to in subrule 23.40(3).

g. *Title V funds.* Funds appropriated by Congress to pay unemployment benefits under Title V of the United States Code to federal civilian and military employees.

h. *Unemployment compensation fund.* A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account.

i. *Unemployment trust fund.* A fund established in the treasury of the United States which contains all moneys deposited with the treasury by the state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

23.1(19) *Indian tribe.* Indian tribe has the same meaning given to the term by Section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

23.1(20) Reserved.

23.1(21) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(22) and **23.1(23)** Reserved.

23.1(24) *Liability determination.* A determination as to whether an employing unit is a subject employer and whether services performed for it constitute employment as defined under the employment security law.

23.1(25) *Liability report.* A report required of all employing units in a state, which gives the information on which the state employment security agency bases its determination as to whether the employing unit is liable under the state employment security law.

23.1(26) *Subject employer.* An employing unit which is subject to the contribution provisions of a state employment security law.

23.1(27) *Tax.* (See "Contributions.")

23.1(28) *Unemployment compensation fund.* The unemployment compensation fund established by this chapter to which all contributions or payments in lieu of contributions are required to be deposited and from which all benefits provided under Iowa Code chapter 96 shall be paid. (See "Funds.")

23.1(29) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(30) *Quarterly wage report.* A report that generates after the employer has electronically submitted its quarterly contribution and payroll.

23.1(31) *Quarterly wage detail.* A report listing workers and their wages by social security number.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"*(3), 96.7(7)*"b,"* 96.11(1) and 96.19(1).

[**ARC 3401C**, IAB 10/11/17, effective 11/15/17]

871—23.2(96) Definition of wages for employment during a calendar quarter.

23.2(1) Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department shall have the following meaning:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The employer's contribution and payroll shall be used as prima facie evidence of when the wages were paid. If the wages are not listed, they shall be considered as paid:

a. On the date appearing on the check.

b. On the date appearing on the notice of direct deposit.

c. On the date the employee received the cash payment.

d. On the date the employee received any other type of payment in lieu of cash.

23.2(3) Wages payable means wages earned and unpaid. (See section 96.19(41).)

23.2(4) Wages is the name by which the remuneration for employment is designated and the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, commission, or it may be paid on an hourly, daily, weekly, monthly or annual basis. Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

23.2(5) When the cash value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

23.2(6) Cash value of room and board.

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in Iowa Code section 96.19(18), the reasonable cash value of same shall be deemed wages subject to contribution.

b. Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs *"d"* and *"e"* of this subrule.

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph *"d"* of this subrule.

Full board and room per week	$300.00
Meals (without lodging) per week	100.00
Meals (without lodging) per day	20.20
Lodging (without meals) per week	198.00
Lodging (without meals) per day	40.00
Individual meals:	
Breakfast	4.50
Lunch	5.30
Dinner	10.50
A meal not identifiable as either breakfast, lunch or dinner	4.50

d. The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or

group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph *"c"* of this subrule, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

e. If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph *"c"* of this subrule, the employer's payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

f. Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code section 96.19(41).

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.3(96) Wages.

23.3(1) *"Wages"* means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

23.3(2) The term "wages" shall not include:

a. Subsistence payments. The amount of payment made by an employer to its employee, which is in addition to the employee's regular wages and is paid for the sole purpose of compensating the employee for expenses inherent in the performance of services by the employee away from the regular base of operation of the employer and employee, commonly referred to as subsistence pay.

b. Travel and other ordinary and necessary expenses. Amounts paid specifically for travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer's business are not wages. Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

c. Employer's payments to persons performing military services. Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

d. Sick pay.

(1) "Wages" shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer's employees. The plan may include dependents.

(2) In the absence of a plan or system any amounts paid by or on behalf of an employer on account of sickness shall not be included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

e. Supplemental unemployment benefit plan (SUB). The term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit's employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or amount equivalent) worked by the employees covered by the agreement until the maximum amount

called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement shall provide that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the United States Internal Revenue Code title 26 of 1970 which is exempt from tax under Section 501(a) of said Code.

(8) The employer shall seek approval of its plan by petitioning that its plan be designated as a supplemental unemployment benefit (SUB) plan in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling. The department will respond in the manner provided for declaratory rulings.

f. *Officers of corporation.* The term "employment" shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such services are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

g. *Remuneration paid by state or political subdivision.* The term "employment" shall not include wages paid by this state or any of its political subdivisions or by an Indian tribe to:

(1) An elected official,

(2) A member of a legislative body,

(3) A member of the judiciary of a state or political subdivision,

(4) A member of the state national guard or air national guard,

(5) An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

See rule 871—23.71(96) for further definition of exemptions (1) through (6).

h. *Sole proprietorship or partnership drawing accounts.* The term "wages" shall not include any of the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

(3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

i. *Payments into 401K and other deferred compensation plans.* Payments made by an employer to a deferred compensation plan, established to provide for an employee's retirement, are not wages subject to contributions unless the payments were deducted from the employee's pay through a salary

reduction agreement. In circumstances where both the employer and the employee contribute to the plan, the employer's share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

j. Remuneration paid to members of limited liability companies based on membership interest. The term "wages" shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. The term "wages" shall not include any remuneration for services performed in lieu of a contribution of cash or property to acquire a membership interest in the limited liability company. See Iowa Code sections 96.19(18a)(9) and 96.19(41e). If the amount of remuneration attributable to membership interest or the purchase of a membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

k. Inmates of correctional institutions. The term "employment" shall not include wages paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

23.3(3) The term "wages" shall include:

a. Small business corporation remuneration. Remuneration paid to officers of "subchapter S" corporations for services performed in Iowa shall be deemed to be wages. Any corporate dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Remuneration to shareholders shall not be deemed to be dividends if such remuneration is paid regularly, either weekly or monthly, and is not in proportion to such shareholder's amount of stock, or in proportion to such shareholder's investment in the corporation. Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder's investment, and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. See subrule 23.3(2) *"f"* for possible exclusion of wages paid to corporate officers who are majority stockholders.

b. Wages of employees hired with equipment. Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee's services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee's wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee's wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

c. Union members. Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

d. Cafeteria plans. A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be "wages" subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered "wages" subject to contributions unless the benefit is specifically excluded from the definition of "wages" in Iowa Code subsection 96.19(41).

e. Personal use of company vehicle. The cash value of personal use of a company automobile or other vehicle is "wages" subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5)*"a,"* 96.19(6)*"a"*(1) and (6), and 96.19(41).

871—23.4(96) Wages—back pay. A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay shall be taxable and recoverable if it meets the definition of wages contained in rule 23.3(96). Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

23.4(1) Where the back pay wages, award or a judgment is paid as remuneration for employment by an employer into an account for an individual, the wages, award or judgment shall be considered as wages paid in the quarter in which the employer actually pays the wages, award or judgment to an account for the individual.

23.4(2) If an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period, and if the benefits are recovered by the department under an agreement between the employer and the individual allowing the employer to deduct and remit to the unemployment compensation fund the amount of benefits received by the individual from the payment in the form of or in lieu of back pay, the employer shall be required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8(5).

871—23.5(96) Gratuities and tips.

23.5(1) The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages unless required by subrule 23.5(2). If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

23.5(3) An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

871—23.6(96) Taxable wages.

23.6(1) *Definition.*

The term *"taxable wages"* means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of $100

based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits.

23.6(2) *Applicability and successorship.*

a. If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage base.

b. The employer shall not deduct any part of the contributions (tax) due on taxable wages from an employee's pay.

c. Only wages reported to the Iowa unemployment insurance program may be used in computing the employee's reportable taxable wages in Iowa.

d. A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

e. A successor employer which received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement Iowa Code section 96.19(37).

[**ARC 3647C**, IAB 2/14/18, effective 3/21/18]

871—23.7(96) New employer contribution rates.

23.7(1) A contributory employer means all employers other than employers which have elected, or are required by law, to reimburse the department for benefits paid in lieu of paying contributions. An employer which has earned a "zero" rate is still considered to be a contributory employer.

23.7(2) A nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

23.7(3) A construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

23.7(4) Once an employer has qualified for an experience rating, the rate will be computed in accordance with the formula given in Iowa Code section 96.7. Rates will vary from 0 percent to 9 percent depending on how each employer's experience compares to the experience of all other employers.

23.7(5) For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

23.7(6) For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits it will be considered chargeable for rate computation purposes until it is terminated.

23.7(7) For the purposes of this rule, any single employer which has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 23.82(96), shall be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

871—23.8(96) Due date of quarterly contribution and payroll.

23.8(1) *Due date.*

a. Contributions shall become due and be payable quarterly on the last day of the month following the calendar quarter for which the contributions have accrued. If the department finds that the collection of any contributions from an employer will be jeopardized by delay, the department may declare the contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly wage detail, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) *Regular due date.* Each covered employer subject to Iowa Code section 96.7 shall file with the department quarterly contribution and payroll on or before the due date, and any employer failing to file a quarterly when due shall be delinquent.

23.8(3) *Due date for new employer.* The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of $1,500 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

a. The first contribution payment of any agricultural employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of ten or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of $20,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

b. The first contribution payment of any domestic employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein the liability was established, or the last day of the month following that calendar quarter in which a total of $1,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

23.8(4) *Due date for elective coverage.* The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(5) *Due date for newly liable employer.* The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

23.8(6) *Delinquent date and penalty and interest.*

a. A quarterly wage detail or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file quarterly contribution and payroll on or before the due date shall pay to the department for each such delinquent quarter, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent quarters when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(7) *Due date upon demand.* If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

23.8(8) *Extension of time.* Upon written request filed with the department before the due date of any contribution and payroll, the department may, for good cause shown, grant an extension in writing of the time for filing and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing employer's quarterly contribution and payroll, a delinquency notice will be sent to all employers from whom no information has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which contribution and payroll need to be made. The notice will be sent or emailed to the employer's last-known address, email address, or place of business. If the employer has sold or dissolved the business, the employer shall show the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall provide the name and address of the successor and the employer's future mailing address.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department an amount equal to the amount of regular or extended benefits paid, including benefits which are based on wage credits transferred from another employer. If extended benefits are in effect, employers shall reimburse one-half of the extended benefits paid; except governmental employers and Indian tribes shall reimburse all extended benefits paid.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules, the department may attempt collection of the amount due including any of the following methods:

a. Issuance of Notice of Jeopardy Assessment and Demand for Payment.

b. Issuance of Notice of Lien.

c. Any other actions as prescribed by the law or these rules including collection by distress warrant. Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.11(96) Identification of workers covered by the Iowa employment security law.

23.11(1) Each employer shall ascertain the federal social security number of each worker employed by such employer in employment subject to the Iowa employment security law.

23.11(2) The employer shall report the worker's federal social security number in making any report required by the department of workforce development with respect to the worker.

23.11(3) If a worker failed to report to the employer such employee's correct federal social security number or fails to show the employer a receipt issued by an office of the social security board acknowledging that the worker has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment a federal social security number with the worker's name exactly as shown on the social security card issued to the worker by the social security board.

b. Each worker who has not secured an account number shall file an application for a federal social security account number on Form SS-5 of the Treasury Department, Internal Revenue Service. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day.

c. If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph *"b"* of this subrule.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.12 Reserved.

871—23.13(96) Employer elections to cover multistate workers.

23.13(1) *Arrangement.* The following rule shall govern the workforce development department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement.

23.13(2) *Definitions.* As used in this rule, unless the context clearly indicates otherwise:

a. *"Jurisdiction"* means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

b. *"Participating jurisdiction"* means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

c. *"Agency"* means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

d. *"Interested jurisdiction"* means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and interested agency means the agency of such jurisdiction.

e. *"Services customarily performed by an individual in more than one jurisdiction"* means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

f. *"Total wages paid in covered employment,"* as it appears in Iowa Code section 96.7(2) for computing the benefit cost ratio, means total wages paid in covered employment, subject to contributions, as provided in Iowa Code section 96.7, and does not include wages paid by reimbursing employers whose payments to the unemployment fund, in lieu of contributions, are made in accordance with Iowa Code section 96.7.

23.13(3) *Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.*

a. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(1) Any part of the individual's services are performed;

(2) The individual resides; or

(3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

c. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

e. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

23.13(4) *Effective period of election.*

a. *Commencement.* An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

b. *Termination.*

(1) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

23.13(5) *Reports and notices by the electing unit.*

a. The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of such notice.

b. Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

c. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.14(96) Elective coverage of excluded services.

23.14(1) An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

a. In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

b. An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

c. The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3)*"a"* and may request evidence of financial stability.

d. Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

e. The effective date of the voluntary election is the date that it is received by the department.

f. Effect of election approval. Each approval of an election shall state the date as of which the approval is effective. The first contribution payment of any employing unit which elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

23.14(2) Reserved.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.15 and **23.16** Reserved.

871—23.17(96) Group accounts. Rescinded **ARC 3303C**, IAB 8/30/17, effective 10/4/17.

871—23.18(96) Nature of relationship between employer-employee.

23.18(1) *Commission sales persons and insurance solicitors.* Commission sales persons generally are considered employees subject to the law regardless of the method of their remuneration unless they are independent contractors.

23.18(2) *Directors and officers of a corporation.* Directors who receive a reasonable fee for attending meetings and perform no other services are not employees of the corporation. Officers of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

23.18(3) *Members of family.*

a. Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this Act.

b. Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this Act.

c. Services performed by a son or daughter over the age of 18 as an approved provider for consumer-directed care in the employ of a father or mother who is an approved consumer of a home- and community-based waiver services program are exempt from the provisions of Iowa Code chapter 96.

23.18(4) *Aliens.* This Act makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

23.18(5) *Aged and minor employees.* Contributions are payable upon services rendered by an employee regardless of the age of the employee.

23.18(6) *Family employment.* Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations or to limited liability companies.

23.18(7) *Partners.* Bona fide partners are not considered employees even though they receive salaries.

23.18(8) *Apprentices-clerks.* This law makes no exceptions for persons serving a clerkship or other form of apprenticeship.

23.18(9) *Members of a limited liability company.* Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.19(96) Employer-employee and independent contractor relationship.

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

23.19(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

23.19(3) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

23.19(4) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

23.19(5) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

23.19(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

23.19(7) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

23.19(8) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

871—23.20(96) Employment—student and spouse of student. Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

This rule is intended to implement Iowa Code section 96.19(18)*"g"*(6).

871—23.21(96) Excluded employment—student. Wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that no work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be excluded from said definition.

This rule is intended to implement Iowa Code section 96.19(18)*"g"*(6).

871—23.22(96) Employees of contractors and subcontractors.

23.22(1) If one employer contracts with another employing unit for any work which is part of the first employer's usual business, the first employer is liable for any contributions based on wages paid

by the second employing unit in connection with the work providing the second employing unit is not liable to pay contributions.

23.22(2) Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

871—23.23(96) Liability of affiliated employing units. An employing unit not qualifying as a covered employer under any other section of this law shall be a liable employer if together with one or more employing units owned or controlled by the same interest, the combined employment or quarterly gross wages (counting together the number of workers or the combined gross quarterly wages of each enterprise) would total one or more workers in a portion of a day in each of 20 different weeks or have a combined gross quarterly payroll which equals or exceeds $1,500 in a calendar quarter.

871—23.24(96) Localization of employment—employees covered—exemption.

23.24(1) When workers perform services in more than one state, the department will review each case individually and make a determination whether or not wages are reportable to Iowa based on the following guidelines in sequence:

a. Services performed in a state are considered localized in that state regardless of where the employer is located. The wages are reportable to the state where the services are performed.

b. When a worker performs services in more than one state and the length of service in any one state is equal to or greater than a reporting period, the worker is reportable to that state. A reporting period is defined as a full calendar quarter. This rule does not apply if work is performed in multiple states during the reporting period.

c. Where services are performed among two or more states in a reporting period, the base of operations is considered. The base of operations is the point from which the workers start and finish their work on a regular basis and that is the state to which the wages are reportable. In this type of case, the department has the right to waive Iowa coverage to another jurisdiction (state of the base of operations) as long as the employee is properly covered by the other state.

d. When workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately directed and controlled is the state to which the wages are reportable provided that some services are performed by the worker in that state.

e. If the services of the workers are not localized in a state, the base of operations is not involved or the place where services are directed and controlled is not applicable, then the wages are reportable to the state in which the worker resides provided some services are performed in that state.

23.24(2) Reserved.

This rule is intended to implement Iowa Code section 96.19(18)*"b."*

871—23.25(96) Domestic service.

23.25(1) Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term "domestic service."

23.25(2) A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

23.25(3) Services of a general household nature are those ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by workers such as cleaning people, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by babysitters, nannies, health aides and similar workers for members of the household are covered.

23.25(4) The services enumerated above are not covered under the term "domestic service" if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, offices or other commercial enterprises.

23.25(5) The term "domestic service" does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties. In situations where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in 871—23.19(96) will be applied.

23.25(6) Rescinded IAB 5/14/03, effective 6/18/03.

23.25(7) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term "school, college, or university" is taken in its commonly or generally accepted sense.

23.25(8) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

23.25(9) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term "domestic service."

23.25(10) Rescinded IAB 5/14/03, effective 6/18/03.

23.25(11) Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder.

This rule is intended to implement Iowa Code sections 96.19(13) and 96.19(16)*"m."*

871—23.26(96) Definition of a farm—agricultural labor.

23.26(1) "Farm" as used in section 96.19(6)*"g"*(3) and as used in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and furbearing animals and wildlife or both such uses, if the activities conducted on the plot or plots of land have as their purpose the accomplishment of an objective which is agricultural in nature.

23.26(2) The definition of farm given in subrule 23.26(1) includes, but is not limited to, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A parcel of real property or a portion of a parcel of real property which is used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any parcel of real property or a portion of a parcel of real property is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is not the primary operation. A parcel of real property or a portion of a parcel of real property which is used primarily to display nursery stock for sale, or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to, garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

23.26(3) If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

23.26(4) A plot of land used primarily for the raising of Christmas trees is a farm.

23.26(5) The following shall be used to determine whether or not services are defined as agricultural labor.

a. Services performed by an individual on a farm, in the employ of any owner, tenant or operator, in connection with the operation constitutes agricultural labor if:

(1) The services are on the farm on which the materials in their raw or natural state were produced, and

(2) Processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

b. If the service is performed as an incident to industrial, manufacturing or commercial operation it does not constitute agricultural labor. (Example: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.)

23.26(6) Services performed on nonfarm property while in the employ of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

23.26(7) Services performed in the handling or processing of any agricultural or horticultural commodity are included as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

23.26(8) Aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining of farm acres while in the employ of any agricultural enterprise is agricultural labor. These include mixing or loading into the airplane the spraying or dusting material, as well as the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural as long as it is performed on a farm. If any of these services are performed on property other than a farm, they are not agricultural labor and are covered by the other provisions of the Iowa employment security law.

23.26(9) If the employer does not own or operate the farm which is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

23.26(10) Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not agricultural labor although they may be rendered on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in agricultural employment as defined in Iowa Code section 96.19(18)*"g"*(3) or rule 23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered agricultural employment the whole of that calendar month.

871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization which is operated primarily for religious purposes.

23.27(1) The word *"church"* is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered.

23.27(2) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of religious orders. On the other hand, a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered, under this Act, to be operated primarily for religious purposes.

23.27(3) The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

23.27(4) A minister is ordained, commissioned, or licensed, if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

23.27(5) The term *"exercise of the ministry"* includes: the conduct of religious worship and the ministration of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

23.27(6) Accordingly, service of a clergyman (clergywoman) as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

23.27(7) School coverage.

a. Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

b. Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

c. Schools that are not affiliated with a church are covered employers with covered employment.

"Affiliated" as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school which is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.19(18)*"a"*(6)(a) and (c).

871—23.28(96) Successor.

23.28(1) Definition of *"successor employer"* as used in Iowa Code section 96.7 and these rules means an employing unit which:

a. Acquired the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition. The acquiring employer must continue to operate the enterprise or business.

b. An employing unit that acquired a severable portion of the business of an employer who is subject to chapter 96 providing:

(1) The portion of the business or enterprise acquired would have in itself met the requirements of section 96.19(16)*"a."*

(2) An application is made for a transfer of the records of the severable portion transferred within 90 days from the date of transfer.

(3) The transfer of records meets the approval of the predecessor and department and adequate information is furnished to meet the requirements.

c. Rescinded IAB 5/14/03, effective 6/18/03.

23.28(2) An *"organization," "trade"* or *"business"* as used in Iowa Code section 96.19(16)*"b"* is acquired if an employing unit acquires factors of an employer's organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:

a. The place of business.
b. The staff of employees.
c. The customers.
d. The good will.
e. The trade name.
f. The stock in trade.
g. The tools and fixtures.
h. Other assets.

23.28(3) Substantially all of the assets as used in Iowa Code section 96.19(16)*"b"* are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

23.28(4) A segregable and identifiable part of enterprise as used in Iowa Code section 96.7(3)*"b"* is acquired if an employing unit acquires factors of any employer's organization, trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The part of the business acquired, if considered separately, would have been liable under section 96.19(16)*"a."* The question of whether a distinct and severable portion is acquired is determined from all of the factors of the particular case. Among the factors to be considered are:

a. The place of business.
b. The staff of employees.
c. The customers.
d. The good will.
e. The trade name.
f. The stock in trade.
g. The accounts receivable.
h. The tools and fixtures.

23.28(5) *"Successor liability"* as used in Iowa Code chapter 96, and these rules, occurs for the acquiring employing unit when there is a transfer of the predecessor's assets or other physical components necessary to continue the operation of the enterprise or business to the successor employer and the successor employing unit must continue to operate the business to the same basic extent as if there had been no change in the ownership or control of the business or enterprise.

23.28(6) Successor liability will be found to occur. If an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer's lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer's experience.

23.28(7) The department will utilize the following general criteria when establishing successorship in specialized cases:

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit's experience unless the lessor

takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer's experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

e. If a covered employer is forced out of business through foreclosure proceedings there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3)*"b,"* 96.8 and 96.19(16)*"b."*

871—23.29(96) Transfer of entire business.

23.29(1) *Notice of acquisition.*

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must notify the department of the status change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall notify the department within 30 days from the date of the transaction. All entities involved in the merger shall provide the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

23.29(2) *Contribution rate.* The successor's contribution rate for the remainder of the calendar year beginning with the date of acquisition shall be assigned as follows:

a. If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the final rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor had an account prior to the transfer, the rate assigned will be the successor's existing rate. However, the successor may apply for a recomputed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

This rule is intended to implement Iowa Code section 96.7(2)*"b."*

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions.

23.30(1) Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

23.30(2) Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7. The transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act, provided the transferee continues to operate the business.

This rule is intended to implement Iowa Code section 96.7.

871—23.31(96) Transfer of segregable portion of an enterprise or business.

23.31(1) *Application and required information.*

a. The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

(1) Completes an electronic registration within 90 days after the date of purchase;

(2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and

(3) Continues to operate the acquired portion of the business.

b. Necessary information establishing the separate identity of the account includes but is not limited to:

(1) Authorized agreement to the transfer by the predecessor;

(2) Date of acquisition of the segregable portion;

(3) Date of commencement of the segregable portion by the predecessor;

(4) The names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred; and

(5) The predecessor and successor names, addresses, and account numbers and information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition.

c. It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn at any time prior to the department's notice that the transfer has been approved.

d. It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn at any time prior to the department's notice that the transfer has been approved.

23.31(2) *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

a. If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

b. If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

(1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion; or

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records attributable to the acquired portion shall be transferred; or

d. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.31(3) *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

23.31(4) *Notification of approval or denial of transfer and appeals.*

a. Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

b. If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 23.52(96) to 23.56(96).

23.31(5) *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.32(96) Mandatory and prohibited successorships.

23.32(1) This rule applies to the mandatory successorship in Iowa Code section 96.7(2)*"b"*(2) and the prohibited successorship in Iowa Code section 96.7(2)*"b"*(3). If one employing unit receives the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This section of the law does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit which continues to operate the portion of the business will establish mandatory successor liability.

b. The mandatory and prohibited successorships contained in Iowa Code sections 96.7(2)*"b"*(2) and (3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

c. "Substantially common ownership, management or control" is determined from the facts of a particular case. Among the factors to be considered are:

(1) The authority to make policy decisions.

(2) The authority to perform personnel actions.

(3) Direction and control of the day-to-day operations.

(4) Financial investment.

(5) Substantial or complete ownership by the same legal entity or entities.

(6) Ability to conduct or liability for financial transactions on behalf of the business.

(7) Authority to commit the business assets.

(8) Common management which may include direction or overall supervision by an individual or group of individuals.

d. For a mandatory full successorship the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship the tax rate shall be established as provided in subrule 23.32(4).

23.32(2) In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2)*"b"*(2), the following rules apply.

a. The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern), and continues the same business activity as the prior employer. A temporary cessation of the business activity by the acquiring entity will not constitute a discontinuance of the business.

b. The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

23.32(3) Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether or not common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

a. The existing employer account has a tax rate less than would be assigned to a new employer,

b. The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,

c. The acquiring entity substantially changed the organization, trade or business after a short period of time, and

d. A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

23.32(4) When a mandatory transfer of a portion of a business occurs, the successor's experience and contribution rate will be determined as follows:

a. The experience transferred to the acquiring employing unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor's first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor's reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages and benefit charges, commencing with the beginning date of the predecessor's account, will be transferred from the predecessor's account to the successor's account.

b. If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

c. If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

d. For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

e. Future benefit(s) will be charged to the base period employer who reported the base period wages.

f. The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

g. Any rate determination resulting from a partial transfer will become final unless one or both of the parties files an appeal. For the specific procedure and requirements for perfecting an employer liability determination appeal, see rule 23.52(96).

h. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.32(5) Penalty contribution rate. The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer that the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code sections 96.7(2)*"b"*(2) and (3) by deliberate nondisclosure of a material fact.

a. The employer will be notified of the penalty contribution rate.

b. If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

c. Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2)*"b"* and 96.16(5).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.33 to **23.35** Reserved.

871—23.36(96) Predecessor—contribution rates for winding down a business. In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall retain the same account number but will recompute the eligibility year, determination date, effective date, law citation and tax rate to that of a newly covered employer. For the purposes of this rule, the term "wind down wages" may exclude

wages earned before the sale or transfer that were paid in the four consecutive quarters after the quarter in which the sale or transfer occurred.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4)*"a."*

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The employer's wage adjustment report shall be filed electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, the employer will electronically submit a wage adjustment for the period and make payment covering all additional contributions, penalty and interest due.

a. If it is apparent, upon examination of any wages reported or adjusted, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit for such overpayment.

b. If it is not apparent from the examination of any wages reported or adjusted that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit shall submit a request within three years from the date on which such overpayment was made. A credit shall be granted only after a review of the request which will set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit or refund for the overpayment.

23.37(3) The amount of the credit will be deducted from the contributions in the employer's account and credited to any outstanding account balance until the credit is used or canceled in accordance with these rules. If the employer fails to utilize the credit as provided above, the department shall, three years from the date of issuance, cancel the credit and show it as a nonrefundable credit. The department, upon request of the employer or on its own initiative, may issue a refund of the overpayment. The state comptroller is responsible for the issuance of the warrant.

23.37(4) When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, the refund or credit shall be reduced by the amount of benefits paid and charged to the employer as a result of the erroneous wages.

23.37(5) All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled to it.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.38(96) Denial of claim for refund or credit. A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

871—23.39(96) Issuance of a duplicate credit memo. Rescinded IAB 5/14/03, effective 6/18/03.

871—23.40(96) Computation of rates for private sector employer.

23.40(1) *Experience rating.* An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year. Indian tribal contributory employers shall be considered private sector employers for the purpose of computing their contribution rate.

23.40(2) *Administrative contribution surcharge.*

a. For calendar years 2002 and 2003, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage of the taxable wage base in effect for the rate year following the computation date which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date. The surcharge will be a three-place decimal number which is added to the contribution rate. The surcharge formula will provide a target revenue level of no greater than $6,525,000 annually and the percentage surcharge will be capped at a maximum of $7 per employee.

b. A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate as on regular contributions.

c. The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly.

23.40(3) *Temporary emergency surcharge.* If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

a. The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

b. A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

c. The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

e. The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8).

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the taxable wages reported for the quarters prior to and ending on June 30 immediately preceding the computation date and benefit

charges based on benefit warrants issued on or before June 30 immediately preceding the computation date. Delinquent reports received after September 30 immediately following the computation date shall not be used for the succeeding year's rate computation.

This rule is intended to implement Iowa Code section 96.19(8).

871—23.42(96) Crediting of interest earned on the unemployment trust fund. Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2)*"c."*

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) *How charged.* Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which the wage credits are based were paid to the claimant.

23.43(2) *Formula for charging employer accounts.*

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

23.43(3) *Rule of two affirmances.*

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to and during the period in which the department is processing the reversal decision.

23.43(4) *Supplemental employment.*

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

b. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the part-time employer. The individual and the part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323

or 60-0186, Decision of the Workforce Development Representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer, and benefit charges shall not be assessed against the part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

23.43(5) *Sole purpose.* The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

23.43(6) Reserved.

23.43(7) *Department-approved training.* A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

23.43(8) *Ten times the weekly benefit amount in insured work requalification.*

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges shall occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges shall be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, was discharged or with whom the individual failed to apply or accept suitable work, will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 23.43(8), paragraph *"a,"* has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form, 60-0227, is an affidavit prepared in duplicate stating: the insured employer's name, mailing address, the starting date of employment, and wages paid subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges and administrative penalty any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form, 60-0227, to indicate the requalifying period.

23.43(9) *Combined wage claim transfer of wages.*

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged

against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. When Iowa is the paying state on an interstate claim and Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

23.43(10) Reserved.

23.43(11) *Extended benefits.*

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer which is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the Indian tribal and governmental contributory or reimbursable employer which is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

23.43(12) *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment, except that no charges shall be made against the account of the base period contributory or reimbursable employer which continues to employ the individual on the same basis that the employer employed the individual during the individual's base period.

23.43(13) *Government contributory charges.* For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law, will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

23.43(14) *Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience.* Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

23.43(15) *Disaster relief.* An employer shall not be charged with benefits for unemployment that is directly caused by a disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of regular benefits. The employer may protest the charges on the Notice of Claim, Form 65-5317, or the Quarterly Charge Statement. The employer must protest the charges within 30 days after the date of mailing of the Quarterly Charge Statement.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4), and 96.29.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.44(96) Benefits payments.

23.44(1) Overpayments. If a claimant is overpaid benefits, the employer will be relieved of benefit charges to such employer's account.

23.44(2) The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

23.44(3) Option of reimbursable credit or refund for an overpayment. The department shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2).

871—23.45 Reserved.

871—23.46(96) Termination of coverage. Rescinded IAB 5/5/10, effective 6/9/10.

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed in an inactive status. Upon determination of an inactive status, the department shall notify the employer that the employer's account has been placed in an inactive status and that the employer is not required to file quarterly reports. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(2) If the department finds that an employer has discontinued business or is no longer paying wages, the department may on its own motion place the account in an inactive status. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(3) If prior to termination, an inactive account is found to have paid wages in any quarter, the employer account shall be reactivated, reports shall be secured for all quarters the account was inactive, including no wage reports for quarters for which there was no employment, and the account shall receive an experience rating; provided, the account has been in existence long enough to qualify for an experience rating.

23.47(4) If, on the rate computation date, the department finds that an employer has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer's account shall be terminated effective the January 1 following the computation date. However, if the employer pays wages after the computation date and prior to the following January 1, the employer's account shall not be terminated, and the employer will receive an assigned rate or an experience rating.

23.47(5) If an employer has filed eight consecutive reports with zero wages, the account may be placed in inactive status.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"* and *"d"* and 96.8(4)*"b."*
[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.48(96) Previously covered employers. If a contributory employer's account has been properly terminated and the employer is again determined liable or a reimbursable employer again elects to be contributory, the employer shall receive a new account number and be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.
[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—23.49 and **23.50** Reserved.

871—23.51(96) Payments in lieu of contributions.

23.51(1) Each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) The payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid and charged to such employer's account. Government and Indian tribal reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections and appeals.

23.52(2) The appeal shall be in writing stating:

a. The name, address and Iowa employer account number of the employer.

b. The name and official position of the person filing the appeal.

c. The decision which is being appealed.

d. The grounds upon which the appeal is based.

23.52(3) The appeal shall be addressed or delivered to: Department of Workforce Development, Tax Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage on appeals filed by mail. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time shall be deemed filed as of the next regular business day.

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail or email, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax bureau may write to the employer and further explain the decision. If the employer still desires a hearing before an administrative law judge, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax bureau will ask the department of inspections and appeals to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be

heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—23.53(96) Rate appeal and eligibility decision reversal.

23.53(1) An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

c. The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1)*"b"* will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 23.53(1)*"b,"* must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

23.53(2) Reserved.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment only when a timely appeal is not filed.

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file quarterly contribution and payroll for all quarters for which the employer is held liable regardless of any appeal. Full payment of the disputed assessment or amount estimated to be owed by the employing unit shall be submitted.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.55(96) Burden of proof.

23.55(1) The burden of proof in all employer liability cases shall rest with the employer.

23.55(2) The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

23.55(3) The burden of proof in successorship and partial successorship cases for determinations and appeals shall rest with the employer that is appealing the determination of the department.

871—23.56(96) Informal settlement.

23.56(1) Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department of workforce development and the person or employer who is or is about to be engaged in the controversy with the department. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon by the parties including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement shall constitute a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

23.56(2) If the parties agree to a settlement, the written statement shall be presented to the administrator of the division of unemployment insurance services for review and approval.

23.56(3) In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on previously submitted wage detail and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

23.57(2) If an employer submits an adjustment without payment, and payment is due, such employer will be assessed for the additional contributions plus interest as provided by law.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.58(96) Assessment of unpaid contributions, interest and penalty. Rescinded IAB 5/14/03, effective 6/18/03.

871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.

23.59(1) If the department finds from the examination of the employer's account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

23.59(2) Assessment—failure to file quarterly contribution and payroll.

a. If any employing unit fails to file quarterly contribution and payroll as required, the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no wage detail was filed. The basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 871—23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax bureau and shall be referred to the collection unit.

This rule is intended to implement Iowa Code section 96.7.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.60(96) Accrual of interest and penalties.

23.60(1) An employer who fails to file wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

23.60(2) The amount of the penalty for a delinquent or insufficient quarterly contribution and payroll shall be based on the total wages paid by the employer in the period for which the report was due. The penalty shall not be less than $35 for the delinquency or the insufficient wage detail not made sufficient within 30 days of a request to do so. Insufficient wage detail is defined as a quarterly submission that does not have all social security numbers, all corresponding names, total wages for each employee, or a reporting unit number. Wage detail submitted without a correct account number, federal employer identification number, labor market information, or wage detail submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

23.60(3) Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(16)*"g"* until 30 days after determination of such liability under the federal Unemployment Tax Act.

23.60(4) Interest and penalty shall not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

23.60(5) Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

23.60(6) The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

23.60(7) Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.61(96) Collection of interest and penalties. When wage detail is filed with contributions paid but penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the contribution or payroll, untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported

to another state in good faith and the contributions thereon were properly paid to the state to which the wages were reported and that said employees were fully insured during the period of unreported liability to this department.
[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised if the request is denied.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party which prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.64(96) Refund of interest and penalty.

23.64(1) Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

a. If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall so find and make an adjustment as follows:

b. The amount of the overpayment shall first be applied against any unpaid liability then due from or accrued against the employing unit. The remainder of such portion of the overpayment shall be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

23.64(2) Reserved.

871—23.65(96) Liens for unpaid contributions, interest, and penalties.

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If wages are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due, a Notice of Assessment and Lien will be issued to the employer.

b. If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment, has been issued (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

c. The lien, known as a Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

23.65(2) When the Notice of Lien is duly filed and recorded, the amount stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy is filed.

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is issued to the employer.

23.65(4) The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and

penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

23.65(5) Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with section 96.14(6).

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing liens in the state where filed, and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions secured except as follows:

a. It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

b. Release of the lien(s) is ordered by a judge having jurisdiction over same.

c. A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

d. A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

23.65(8) In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

23.65(9) Interest and penalty secured by a lien may be compromised by the department at its discretion.

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a Satisfaction of Lien by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be provided to the employer.

This rule is intended to implement Iowa Code section 96.14(3).

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.66(96) Jeopardy assessments.

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 871—23.8(96) for filing and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by mail to the employer's address of record and such mailing shall be a satisfactory service.

23.66(2) If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the

bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding the sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from the employer, and to pay the proceeds of the sale over to the clerk of district court in and for the county in which the property is found. All costs of the execution shall be charged to the employer.

23.67(2) The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which the property was levied upon, in accordance with the Iowa Code and the Iowa Rules of Civil Procedure.

23.67(3) No property belonging to the employer shall be exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

871—23.68(26USC6402) Collection of covered unemployment compensation. Pursuant to 26 U.S.C. 6402(f), the department shall utilize the Treasury Offset Program in order to collect covered unemployment compensation.

This rule is intended to implement 26 U.S.C. 6402(f).

[**ARC 3529C**, IAB 12/20/17, effective 1/24/18]

871—23.69(96) Injunction for nonpayment or failure to provide required information.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file or provide any information required by the department.

23.69(2) Discretion as to whether or not to seek an injunction rests with the department.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

a. That the department plans to seek an injunction against the employer.

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which required information has not been provided.

c. The amount of indebtedness.

d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

(1) The entire indebtedness is paid.

(2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

e. The employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent wage detail, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

[**ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund with the department for its consideration.

23.70(2) The election to reimburse must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service. If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other documents that brought the organization into being.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the tax bureau. The request for reimbursable status will be examined by an authorized representative.

23.70(4) and **23.70(5)** Rescinded IAB 2/10/99, effective 3/17/99.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

23.70(7) to **23.70(9)** Rescinded IAB 2/10/99, effective 3/17/99.

23.70(10) The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

23.70(11) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization changing its tax status from reimbursable to contributory or contributory to reimbursable will be given a new employer account number. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph *"b."*

b. The experience, while under each tax status, will not be combined for rate computation purposes unless the department finds, or has reason to believe, that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status, plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(12) Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a contributory employer, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(14) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3401C**, IAB 10/11/17, effective 11/15/17; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding. An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision established by proper authorities, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entities within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

23.71(2) In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district which will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose, or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

23.71(3) The term "employment" does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision which excludes an individual employed by a governmental entity or Indian tribe who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of

more than eight hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions which have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position and the responsibilities involved shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) "Policymaker" is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An "advisory position" is one which advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word "major" in the phrase "major nontenured policymaking or advisory position" refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and which involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term "nontenured" is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured or not. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

c. An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual's services for such period are excluded because the individual is performing excluded services.

d. An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

e. Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual's "military" capacity. It does not apply to any service performed in any other capacity.

f. If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from "military" service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

23.71(4) Exemption from "employment" for individuals performing services for a governmental entity or Indian tribe as part of an unemployment work relief or work training program. Services performed by an individual for a government entity or Indian tribe for the purpose of qualifying or repaying a welfare or relief grant will not be considered "employment" provided that:

a. The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.

b. The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.

c. The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.19(18)*"a"*(6)(e) and (g).

871—23.72(96) Governmental entity—elective coverage and liability.

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

a. It is an application for all employees of the entity.

b. The applicant is a "governmental entity."

c. It sets forth the name and address of the entity.

23.72(2) The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

23.72(3) An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. The department may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

23.72(5) If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this section if it elects to continue the elective coverage agreement of the predecessor.

23.72(6) The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer's percentage of excess when compared to all other governmental contributory employers' percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

23.72(7) Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).

[**ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.73(96) Governmental entities—delinquent accounts.

23.73(1) Any governmental entity which is an employer and which becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

23.73(2) Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

23.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the department shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the department from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the department for the fund. However, the department shall notify the delinquent entity of the department's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from 1979 Iowa Acts, chapter 33, section 25. It is being used as a rule because it conflicts with the preceding paragraph in Iowa Code chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of 120 days is the most recent expression of the legislature.

This rule is intended to implement Iowa Code section 96.14(3) and 1979 Iowa Acts, chapter 33.

871—23.74 to **23.81** Reserved.

871—23.82(96) Definition of construction employer.

23.82(1) Construction. The department will utilize the North America Industry Classification System manual (2017 edition) to determine which employers will be classified as construction. The manual is available on the Internet to view or download at www.census.gov/eos/www/naics.

a. The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, and maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. Employers that provide workers primarily for construction will be classified as construction employers.

b. This sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction (except buildings), such as highways, power plants, and pipelines; and (3) construction activity by special trade contractors.

c. Establishments classified in Subsector 233, Building, Developing, and General Contracting, and Subsector 234, Heavy Construction, usually assume responsibility for an entire construction project, and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale and land subdividers and land developers, who engage in subdividing real property into lots for sale, are included in Subsector 233, Building, Developing, and General Contracting. (Special trade contractors are included in Subsector 234, Heavy Construction, if they are engaged in activities primarily relating to heavy construction, such as grading for highways.) Establishments included in these subsectors operate as general contractors, design-builders, engineer-constructors, joint-venture contractors, and turnkey construction contractors. Establishments identified as construction management firms are also included.

d. Establishments classified in Subsector 235, Special Trade Contractors, are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for builders and general contractors under subcontract or directly for project owners. Establishments engaged in demolition or wrecking of buildings and other structures, dismantling of machinery, excavating, shoring and underpinning, anchored earth retention activities, foundation drilling, and grading for buildings are also included in this subsector.

e. "Force account" construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

f. The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as an activity of those establishments.

23.82(2) The term "construction" includes, but is not limited to:

a. *Land subdividing and land development.* Establishments primarily engaged in subdividing real property into lots or developing lots for sale.

b. *Residential building construction.*

(1) Single-family housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations, and repairs) of single-family residential housing units.

Building alterations, single-family—general contractors
Building construction, single-family—general contractors
Custom builders, single-family houses—general contractors
Designing and erecting, combined: single-family houses—general contractors
Home improvements, single-family—general contractors
House construction, single-family—general contractors
House: shell erection, single-family—general contractors
Mobile home repair, on site—general contractors
Modular housing, single-family (assembled on site)—general contractors
One-family house construction—general contractors
Prefabricated single-family houses erection—general contractors
Premanufactured housing, single-family (assembled on site)—general contractors
Remodeling buildings, single-family—general contractors
Renovating buildings, single-family—general contractors
Repairing buildings, single-family—general contractors
Residential construction, single-family—general contractors
Row house (single-family) construction—general contractors
Town house construction—general contractors

(2) Multifamily housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of multifamily residential housing units.

Apartment building construction—general contractors
Building alterations, residential: except single-family—general contractors

Building construction, residential: except single-family—general contractors
Custom builders, residential: except single-family—general contractors
Designing and erecting, combined: residential, except single-family—general contractors
Dormitory construction—general contractors
Home improvements, residential: except single-family—general contractors
Prefabricated building erection, residential: except single-family—general contractors
Remodeling buildings, residential: except single-family—general contractors
Renovating buildings, residential: except single-family—general contractors
Repairing buildings, residential: except single-family—general contractors
Residential construction, except single-family—general contractors

c. Nonresidential building construction.

(1) Manufacturing and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of manufacturing and industrial buildings.

Building alterations, industrial and warehouse—general contractors
Building components manufacturing plant construction—general contractors
Building construction, industrial and warehouse—general contractors
Clean room construction—general contractors
Cold storage plant construction—general contractors
Commercial warehouse construction—general contractors
Custom builders, industrial and warehouse—general contractors
Designing and erecting, combined: industrial—general contractors
Dry cleaning plant construction—general contractors
Factory construction—general contractors
Food products manufacturing or packing plant construction—general contractors
Grain elevator construction—general contractors
Industrial building construction—general contractors
Industrial plant construction—general contractors
Paper pulp mill construction—general contractors
Pharmaceutical manufacturing plant construction—general contractors
Prefabricated building erection, industrial—general contractors
Remodeling buildings, industrial and warehouse—general contractors
Renovating buildings, industrial and warehouse—general contractors
Repairing buildings, industrial and warehouse—general contractors
Truck and automobile assembly plant construction—general contractors
Warehouse construction—general contractors

(2) Commercial and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of commercial and industrial buildings.

Administration building construction—general contractors
Amusement building construction—general contractors
Auditorium construction—general contractors
Bank building construction—general contractors
Building alterations, nonresidential: except industrial and warehouses—general contractors
Building construction, nonresidential: except industrial and warehouses—general contractors
Casino construction—general contractors
Church, synagogue and related building construction—general contractors
Civic center construction—general contractors
Commercial building construction—general contractors
Custom builders, nonresidential: except industrial and warehouses—general contractors
Designing and erecting, combined: commercial—general contractors
Dome construction—general contractors

Farm building construction, except residential—general contractors
Fire station construction—general contractors
Garage construction—general contractors
Hospital construction—general contractors
Hotel construction—general contractors
Institutional building construction, nonresidential—general contractors
Mausoleum construction—general contractors
Motel construction—general contractors
Municipal building construction—general contractors
Museum construction—general contractors
Office building construction—general contractors
Passenger and freight terminal building construction—general contractors
Post office construction—general contractors
Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors
Prison construction—general contractors
Remodeling buildings, nonresidential: except industrial and warehouses—general contractors
Renovating buildings, nonresidential: except industrial and warehouses—general contractors
Repairing buildings, nonresidential: except industrial and warehouses—general contractors
Restaurant construction—general contractors
School building construction—general contractors
Service station construction—general contractors
Shopping center construction—general contractors
Silo construction, agricultural—general contractors
Stadium construction—general contractors
Store construction—general contractors

d. Highway, street, bridge and tunnel construction.

(1) Highway and street construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of highways (except elevated), streets, roads, or airport runways, and establishments identified as highway and street construction management firms, and establishments identified as special trade contractors engaged in performing subcontract work primarily related to highway and street construction.

Airport runway construction—general contractors
Alley construction—general contractors
Asphalt paving; roads, public sidewalks and streets—contractors
Concrete construction; roads, highways, public sidewalks, and streets—contractors
Grading for highways, streets and airport runways—contractors
Guardrail construction on highways—contractors
Highway construction, except elevated—general contractors
Highway signs, installation of—contractors
Parkway construction—general contractors
Paving construction—contractors
Resurfacing streets and highways—contractors
Road construction, except elevated—general contractors
Sidewalk construction, public—contractors
Street maintenance or repair—contractors
Street paving—contractors

(2) Bridge and tunnel construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of bridges, viaducts, elevated highways and tunnels, and establishments identified as bridge and tunnel construction management firms, and establishments identified as special trade contractors primarily engaged in performing subcontract work related to bridge and tunnel construction.

Abutment construction—general contractors
Bridge construction—general contractors
Causeway construction on structural supports—general contractors
Highway construction, elevated—general contractors
Overpass construction—general contractors
Trestle construction—general contractors
Tunnel construction—general contractors
Underpass construction—general contractors
Viaduct construction—general contractors

e. Other heavy construction.

(1) Water, sewer, and pipeline construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of water mains, sewers, drains, gas mains, natural gas pumping stations, and gas and oil pipelines, and establishments identified as water, sewer and pipeline construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to water, sewer, and pipeline construction.

Aqueduct construction—general contractors
Conduit construction—contractors
Distribution lines (oil and gas field) construction—general contractors
Gas main construction—general contractors
Manhole construction—contractors
Natural gas compressing station construction—general contractors
Pipe laying—general contractors
Pipeline construction—general contractors
Pipeline wrapping—contractors
Pumping station construction—general contractors
Sewage collection and disposal line construction—general contractors
Sewer construction—general contractors
Water main line construction—general contractors

(2) Power and communication transmission line construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of electric power and communication transmission lines and towers, radio and television transmitting/receiving towers, cable laying, and cable television lines, and establishments identified as power and communication transmission line construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to power and communication line construction.

Cable laying construction—contractors
Cable television line construction—contractors
Pole line construction—general contractors
Power line construction—general contractors
Telegraph line construction—general contractors
Telephone line construction—general contractors
Television and radio transmitting tower construction—general contractors
Transmission line construction—general contractors

(3) Industrial nonbuilding structure construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of heavy industrial nonbuilding structures, such as chemical complexes, or facilities, cement plants, petroleum refineries, industrial incinerators, ovens, kilns, power plants (except hydroelectric plants), and nuclear reactor containment structures, and establishments identified as industrial nonbuilding construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to industrial nonbuilding construction.

Chemical complex or facilities construction—general contractors
Coke oven construction—general contractors

Discharging station construction, mine—general contractors
Furnace construction for industrial plants—general contractors
Industrial incinerator construction—general contractors
Industrial plant appurtenance construction—general contractors
Kiln construction—general contractors
Light and power plant construction—general contractors
Loading station construction, mine—general contractors
Mine loading and discharging station construction—general contractors
Mining appurtenance construction—general contractors
Nuclear reactor containment structure construction—general contractors
Oil refinery construction—general contractors
Oven construction, bakers'—general contractors
Oven construction for industrial plants—general contractors
Petrochemical plant construction—general contractors
Petroleum refinery construction—general contractors
Power plant construction—general contractors
Tipple construction—general contractors
Washeries construction, mining—general contractors

(4) All other heavy construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction or repairs) of heavy nonbuilding construction projects (except highway, street, bridge, tunnel, water lines, sewer lines, pipelines, and power and communication transmission lines), and industrial nonbuilding structures, and establishments identified as all other heavy construction management firms, and establishments primarily engaged in construction equipment rental with an operator, and establishments identified as special trade contractors engaged in activities primarily related to all other heavy construction.

Athletic field construction—general contractors
Blasting, except building demolition—contractors
Breakwater construction—general contractors
Bridle path construction—general contractors
Brush clearing or cutting—contractors
Caisson drilling—contractors
Canal construction—general contractors
Channel construction—general contractors
Channel cutoff construction—general contractors
Clearing of land—general contractors
Cofferdam construction—general contractors
Cutting right-of-way—general contractors
Dam construction—general contractors
Dike construction—general contractors
Dock construction—general contractors
Drainage project construction—general contractors
Dredging—general contractors
Earthmoving, not connected with building construction—general contractors
Flood control project construction—general contractors
Golf course construction—general contractors
Harbor construction—general contractors
Heavy equipment rental with an operator—contractors
Hydroelectric plant construction—general contractors
Irrigation projects, construction—general contractors
Jetty construction—general contractors
Land clearing—contractors
Land drainage—contractors

Land leveling (irrigation)—contractors
Land reclamation—contractors
Levee construction—general contractors
Lock and waterway construction—general contractors
Marine construction—general contractors
Missile facilities construction—general contractors
Pier construction—general contractors
Pile driving—general contractors
Pond construction—general contractors
Railroad construction—general contractors
Railway roadbed construction—general contractors
Reclamation projects construction—general contractors
Reservoir construction—general contractors
Revetment construction—general contractors
Rock removal-underwater—contractors
Sewage treatment plant construction—general contractors
Ski tow erection—general contractors
Soil compacting service—contractors
Submarine rock-removal—general contractors
Subway construction—general contractors
Tennis court construction, outdoor—general contractors
Timber removal-underwater—contractors
Trail building—general contractors
Trailer camp construction—general contractors
Trenching—contractors
Waste disposal plant construction—general contractors
Water power project construction—general contractors
Water treatment plant construction—general contractors
Waterway construction—general contractors
Wharf construction—general contractors

f. Plumbing, heating and air conditioning contractors. Establishments primarily engaged in one or more of the following: (1) installing plumbing, heating, and air-conditioning equipment; (2) servicing plumbing, heating, and air-conditioning equipment; and (3) the combined activity of selling and installing plumbing, heating, and air-conditioning equipment. The plumbing, heating, and air-conditioning work performed includes new work, additions, alterations, and maintenance and repairs.

Air system balancing and testing—contractors
Air conditioning, with or without sheet metal work—contractors
Boiler cleaning—contractors
Boiler erection and installation—contractors
Drainage system installation (cesspool and septic tank)—contractors
Dry well (cesspool) construction—contractors
Fuel oil burner installation and servicing—contractors
Furnace repair—contractors
Gasline hookup—contractors
Heating equipment installation—contractors
Heating, with or without sheet metal work—contractors
Lawn sprinkler system installation—contractors
Mechanical contractors
Piping, plumbing—contractors
Plumbing and heating—contractors
Plumbing repair—contractors

Plumbing, with or without sheet metal work—contractors
Solar heating apparatus—contractors
Sprinkler system installation—contractors
Steam fitting—contractors
Sump pump installation and servicing—contractors
Ventilating work, with or without sheet metal work—contractors
Water pump installation and servicing—contractors
Water system balancing and testing—contractors
Work combined with heating or air conditioning—contractors

g. Painting and wall covering contractors. Establishments primarily engaged in interior or exterior painting and interior wall covering. The painting and wall covering work includes new work, additions, alterations, and maintenance and repairs.

Bridge painting—contractors
Electrostatic painting on site (including lockers and fixtures)—contractors
House painting—contractors
Painting of buildings and other structures, except roofs—contractors
Paper hanging—contractors
Ship painting—contractors
Traffic lane painting—contractors
Wallpaper removal—contractors
Whitewashing—contractors

h. Electrical contractors. Establishments primarily engaged in one or more of the following: (1) performing electrical work at the site; (2) servicing electrical equipment at the site; and (3) the combined activity of selling and installing electrical equipment. The electrical work performed includes new work, additions, alterations, and maintenance and repairs.

Cable splicing, electrical—contractors
Cable television hookup—contractors
Communication equipment installation—contractors
Electric work—contractors
Electrical repair at site of construction—contractors
Electronic control system installation—contractors
Highway lighting and electrical signal construction—contractors
Intercommunication equipment installation—contractors
Sound equipment installation—contractors
Telecommunications equipment installation—contractors
Telephone and telephone equipment installation—contractors

i. Masonry, stone work, tile setting and plastering.

(1) Masonry and stone contractors. Establishments primarily engaged in masonry work, stone setting, and other stone work. The masonry work, stone setting and other stone work performed includes new work, additions, alterations, and maintenance and repairs.

Bricklaying—contractors
Cement block laying—contractors
Chimney construction and maintenance—contractors
Concrete block laying—contractors
Foundations, building of: block, stone or brick—contractors
Marble work, exterior construction—contractors
Masonry—contractors
Refractory brick construction—contractors
Retaining wall construction: block, stone or brick—contractors
Stone setting—contractors
Stone work erection—contractors
Tuck pointing—contractors

(2) Drywall, plastering, acoustical, and insulation contractors. Establishments primarily engaged in drywall, plaster work, acoustical and building insulation work. The drywall, plaster work, acoustical and insulation work performed includes new work, additions, alterations, and maintenance and repairs.

Acoustical work—contractors
Ceilings, acoustical installation—contractors
Drywall construction—contractors
Insulation installation, buildings—contractors
Lathing—contractors
Plastering, plain or ornamental—contractors
Solar reflecting insulation film—contractors
Stucco construction—contractors
Taping and finishing drywall—contractors

(3) Tile, marble, terrazzo, and mosaic contractors. Establishments primarily engaged in (1) setting and installing ceramic tile, marble (interior only), terrazzo, and mosaic, or (2) mixing marble particles and cement to make terrazzo at the job site. The tile, marble, terrazzo, and mosaic work performed includes new work, additions, alterations, and maintenance and repairs.

Fresco work—contractors
Mantel work—contractors
Marble installation, interior; including finishing—contractors
Mosaic work—contractors
Terrazzo work—contractors
Tile installation, ceramic—contractors
Tile setting, ceramic—contractors

j. Carpentering and floor contractors.

(1) Carpentry contractors. Establishments primarily engaged in framing, carpentry, and finishing work. The carpentry work performed includes new work, additions, alterations, and maintenance and repairs.

Carpentry work—contractors
Folding door installation—contractors
Framing—contractors
Garage door installation—contractors
Joinery, ship—contractors
Ship joinery—contractors
Store fixture installation—contractors
Trim and finish—contractors
Window and door (prefabricated) installation—contractors

(2) Floor laying and other floor contractors. Establishments primarily engaged in the installation of resilient floor tile, carpeting, linoleum, and wood or resilient flooring. The floor laying and other floor work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalt tile installation—contractors
Carpet laying or removal service—contractors
Fireproof flooring construction—contractors
Floor laying, scraping, finishing and refinishing—contractors
Flooring, wood—contractors
Hardwood flooring—contractors
Linoleum installation—contractors
Parquet flooring—contractors
Resilient floor laying—contractors
Vinyl floor tile and sheet installation—contractors

k. Roofing, siding, and sheet metal contractors. Establishments primarily engaged in the installation of roofing, siding, sheet metal work, and roof drainage-related work, such as downspouts

and gutters. The roofing, siding and sheet metal work performed includes new work, additions, alterations, and maintenance and repairs.

Architectural sheet metal work—contractors
Ceilings, metal; erection and repair—contractors
Coppersmithing, in connection with construction work—contractors
Downspout installation, metal—contractors
Duct work, sheet metal—contractors
Gutter installation, metal—contractors
Roof spraying, painting or coating—contractors
Roofing work, including repairing—contractors
Sheet metal work: except plumbing, heating or air conditioning—contractors
Siding—contractors
Skylight installation—contractors
Tinsmithing, in connection with construction work—contractors

l. *Concrete contractors.* Establishments primarily engaged in the use of concrete and asphalt to produce parking areas, building foundations, structures, and retaining walls and the use of all materials to produce patios, private driveways and private walks. The concrete work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalting of private driveways and private parking areas—contractors
Blacktop work; private driveways and private parking areas—contractors
Concrete finishers—contractors
Concrete work: private driveways, sidewalks, and parking areas—contractors
Culvert construction—contractors
Curb construction—contractors
Foundations, building of: poured concrete—contractors
Grouting work—contractors
Gunite work—contractors
Parking lot construction—contractors
Patio construction, concrete—contractors
Sidewalk construction, except public—contractors

m. *Water well drilling contractors.* Establishments primarily engaged in drilling, tapping, and capping of water wells and geothermal drilling. The water well drilling work performed includes new work, additions, alterations, and maintenance and repairs.

Drilling water wells—contractors
Geothermal drilling—contractors
Servicing water wells—contractors
Well drilling, water: except oil or gas field water intake—contractors

n. *Other special trade contractors.*

(1) Structural steel erection contractors. Establishments primarily engaged in one or more of the following: (1) erecting metal, structural steel and similar products of prestressed or precast concrete to produce structural elements of building exterior, and elevator fronts; (2) setting rods, bars, rebar, mesh and cages to reinforce poured-in-place concrete; and (3) erecting cooling towers and metal storage tanks. The structural steel erection work performed includes new work, additions, alterations, reconstruction, and maintenance and repairs.

Building front installations, metal—contractors
Concrete products, structural precast or prestressed: placing of—contractors
Concrete reinforcement, placing of—contractors
Curtain wall installation—contractors
Elevator front installation, metal—contractors
Iron work, structural—contractors
Metal furring—contractors
Steel work, structural—contractors

Storage tanks, metal; erection—contractors
Storefront installation, metal—contractors

(2) Glass and glazing contractors. Establishments primarily engaged in installing glass or tinting glass. The glass work performed includes new work, additions, alterations, and maintenance and repairs.

Glass installation, except automotive—contractors
Glass work, except automotive—contractors
Glazing work—contractors
Tinting glass—contractors

(3) Excavation contractors. Establishments primarily engaged in preparing land for building construction. The excavation work performed includes new work, additions, alterations, and repairs.

Excavation work—contractors
Foundation digging (excavation)—contractors
Grading: except for highways, streets and airport runways—contractors

(4) Wrecking and demolition contractors. Establishments primarily engaged in wrecking and demolition of buildings and other structures.

Concrete breaking for streets and highways—contractors
Demolition of buildings or other structures, except marine—contractors
Dismantling steel oil tanks, except oil field work—contractors
Underground tank removal—contractors
Wrecking of building or other structures, except marine—contractors

(5) Building equipment and other machinery installation contractors. Establishments primarily engaged in one or more of the following: (1) the installation or dismantling of building equipment, machinery or other industrial equipment; (2) machine rigging; and (3) millwrighting. The building equipment and other machinery installation work performed includes new work, additions, alterations, and maintenance and repairs.

Conveyor system installation—contractors
Dismantling of machinery and other industrial equipment—contractors
Dumbwaiter installation—contractors
Dust collecting equipment installation—contractors
Elevator installation, conversion, and repair—contractors
Incinerator installation, small—contractors
Installation of machinery and other industrial equipment—contractors
Machine rigging—contractors
Millwrights
Pneumatic tube system installation—contractors
Power generating equipment installation—contractors
Revolving door installation—contractors
Vacuum cleaning systems, built-in—contractors

(6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.

Antenna installation, except household type—contractors
Artificial turf installation—contractors
Awning installation—contractors
Bathtub refinishing—contractors
Boring for building construction—contractors
Bowling alley installation and service—contractors
Cable splicing service, nonelectrical—contractors
Caulking (construction)—contractors
Cleaning building exteriors—contractors
Cleaning new buildings after construction—contractors
Coating of concrete structures with plastic—contractors

Core drilling for building construction—contractors
Countertop installation—contractors
Dampproofing buildings—contractors
Dewatering—contractors
Diamond drilling for building construction—contractors
Epoxy application—contractors
Erection and dismantling of forms for poured concrete—contractors
Fence construction—contractors
Fire escape installation—contractors
Fireproofing buildings—contractors
Forms for poured concrete, erection and dismantling—contractors
Gas leakage detection—contractors
Gasoline pump installation—contractors
Glazing of concrete surfaces—contractors
Grave excavation—contractors
House moving—contractors
Insulation of pipes and boilers—contractors
Lead burning—contractors
Lightning conductor erection—contractors
Mobile home site setup and tie down—contractors
Ornamental metal work—contractors
Paint and wallpaper stripping—contractors
Plastic wall tile installation—contractors
Posthole digging—contractors
Sandblasting of building exteriors—contractors
Scaffolding construction—contractors
Service and repair of broadcasting stations—contractors
Service station equipment installation, maintenance and repair—contractors
Shoring and underpinning work—contractors
Spectator seating installation—contractors
Steam cleaning of building exteriors—contractors
Steeplejacks
Swimming pool construction—contractors
Television and radio stations, service and repair of—contractors
Test boring for construction—contractors
Tile installation, wall: plastics—contractors
Waterproofing—contractors
Weatherstripping—contractors
Welding contractors, operating at site of construction
Window shade installation—contractors

23.82(3) *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases, employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the North American Industry Classification System and implements Iowa Code sections 96.7(2), 96.7(3), 96.7(4) and 96.11(1).

[**ARC 3529C**, IAB 12/20/17, effective 1/24/18]

[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]
[Filed 4/29/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 12/9/76, Notice 11/3/76—published 12/29/76, effective 2/2/77]
[Filed emergency 12/23/76—published 1/12/77, effective 12/23/76]
[Filed 9/16/77, Notice 8/10/77—published 10/5/77, effective 11/9/77]
[Filed 9/30/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]
[Filed 5/24/78, Notice 4/5/78—published 6/14/78, effective 7/19/78]
[Filed 8/17/78, Notice 6/28/78—published 9/6/78, effective 10/11/78]
[Filed 12/22/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]
[Filed emergency 6/22/79—published 7/11/79, effective 7/1/79]
[Filed 10/12/79, Notice 6/27/79—published 10/31/79, effective 12/5/79]
[Filed 2/12/80, Notice 10/31/79—published 3/5/80, effective 4/9/80]
[Filed 7/31/80, Notice 4/30/80—published 8/20/80, effective 9/24/80]
[Filed 12/5/80, Notice 10/1/80—published 12/24/80, effective 1/28/81]
[Filed 4/10/81, Notices 1/21/81, 2/18/81—published 4/29/81, effective 6/4/81
[Filed 4/23/81, Notice 3/18/81—published 5/13/81, effective 6/18/81][1]
[Filed emergency 5/11/81—published 5/27/81, effective 5/11/81]
[Filed emergency 6/15/81—published 7/8/81, effective 7/1/81]
[Filed emergency 10/23/81—published 11/11/81, effective 10/23/81]
[Filed 11/6/81, Notice 7/8/81—published 11 /25/81, effective 12/30/81]
[Filed emergency 12/2/81—published 12/23/81, effective 12/2/81]
[Filed emergency 12/8/81—published 1/6/82, effective 12/8/81]
[Filed 4/23/82, Notice 11/25/81—published 5/12/82, effective 6/17/82]
[Filed 7/30/82, Notice 6/9/82—published 8/18/82, effective 9/22/82]
[Filed 8/26/82, Notice 7/21/82—published 9/15/82, effective 10/20/82]
[Filed emergency 6/27/83—published 7/20/83, effective 7/1/83]
[Filed emergency 9/23/83—published 10/12/83, effective 10/1/83]
[Filed 2/10/84, Notices 8/31/83, 10/12/83—published 2/29/84, effective 4/5/84]◊

[Filed 5/2/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed emergency 6/1/84—published 6/20/84, effective 6/21/84]
[Filed 8/24/84, Notice 6/20/84—published 9/12/84, effective 10/17/84]
[Filed 1/11/85, Notice 8/29/84—published 1/30/85, effective 3/6/85]
[Filed 1/14/85, Notice 10/24/84—published 1/30/85, effective 3/6/85]
[Filed 1/14/85, Notice 12/5/84—published 1/30/85, effective 3/6/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]
[Filed 7/11/86, Notice 5/7/86—published 7/30/86, effective 9/3/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]◊
[Filed 11/7/86, Notice 8/13/86—published 12/3/86, effective 1/7/87]
[Filed emergency 6/12/87—published 7/1/87, effective 7/1/87]
[Filed 6/12/87, Notice 4/8/87—published 7/1/87, effective 8/5/87]
[Filed 6/12/87, Notice 5/6/87—published 7/1/87, effective 8/5/87]
[Filed 7/24/87, Notice 6/3/87—published 8/12/87, effective 9/16/87]
[Filed 9/4/87, Notice 7/1/87—published 9/23/87, effective 10/28/87]
[Filed 2/19/88, Notice 12/30/87—published 3/9/88, effective 4/13/88]
[Filed 4/1/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed 8/5/88, Notice 6/29/88—published 8/24/88, effective 9/28/88]
[Filed 11/14/88, Notices 8/24/88, 10/19/88—published 11/30/88, effective 1/4/89]
[Filed 11/23/88, Notice 10/19/88—published 12/14/88, effective 1/18/89]
[Filed 2/3/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 6/23/89, Notice 5/17/89—published 7/12/89, effective 8/16/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89,effective 11/22/89]
[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
[Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 12/21/90, Notice 11/14/90—published 1/9/91, effective 2/13/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
[Filed 6/16/95, Notice 5/10/95—published 7/5/95, effective 8/9/95]
[Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
[Filed 8/22/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Transferred from 345—Ch 3 to 871—Ch 23 IAC Supplement 3/12/97]
[Filed 1/20/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 3/3/00, Notice 1/26/00—published 3/22/00, effective 4/26/00]
[Filed 10/24/01, Notice 9/19/01—published 11/14/01, effective 12/19/01]
[Filed 4/24/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]
[Filed ARC 8711B (Notice ARC 8583B, IAB 3/10/10), IAB 5/5/10, effective 6/9/10]
[Filed ARC 3247C (Notice ARC 3070C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3303C (Notice ARC 3178C, IAB 7/5/17), IAB 8/30/17, effective 10/4/17]
[Filed ARC 3342C (Notice ARC 3226C, IAB 8/2/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 3401C (Notice ARC 3250C, IAB 8/16/17), IAB 10/11/17, effective 11/15/17]
[Filed ARC 3402C (Notice ARC 3254C, IAB 8/16/17), IAB 10/11/17, effective 11/15/17]
[Filed ARC 3529C (Notice ARC 3325C, IAB 9/27/17), IAB 12/20/17, effective 1/24/18]
[Filed ARC 3562C (Notice ARC 3280C, IAB 8/30/17; Amended Notice ARC 3380C, IAB 10/11/17; Amended Notice ARC 3432C, IAB 10/25/17), IAB 1/3/18, effective 2/7/18]

[Filed ARC 3647C (Notice ARC 3522C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

◊ Two or more ARCs

1 Agency rescinded prior to effective date

CHAPTER 24
CLAIMS AND BENEFITS

[Prior to 11/17/75, Ch 3]
[Prior to 9/24/86, Employment Security[370]]
[The filed emergency amendments were rescinded and the amendments to Chapter 4 were adopted following Notice, 12/31/86 IAB, effective 2/4/87]
[Prior to 3/12/97, Job Service Division [345] Ch 4]

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(1) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

24.1(2) *Administrative office (state).* Same as central office.

24.1(3) *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency. See also liable state.

24.1(4) Reserved.

24.1(5) *Annual benefit amount.* See maximum annual benefits under benefits.

24.1(6) *Appeals.* See rule 871—26.1(96).

a. *Administrative appeal.* A request for a review by an appeals authority of a state employment security agency's determination on a claim for benefits, on a status report, or on an employer's contribution rate, or a request for a review by a higher appeals authority of a decision made by a lower appeals authority.

b. *Employment appeal board of the department of inspections and appeals.* The employment appeal board of the department of inspections and appeals is established to hear and decide disputed claims. The employment appeal board of the department of inspections and appeals will consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member will represent the general public, one member will represent employers, and one member will represent employees.

This subrule is intended to implement Iowa Code section 96.6(4).

24.1(7) *Applicant.* Any individual applying for work at a workforce development center.

24.1(8) and **24.1(9)** Reserved.

24.1(10) *Average weekly wages.* See wages.

24.1(11) *Base period.* The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

24.1(12) *Base period employer and chargeable employer.*

a. *Base period employer.* An employer who paid wages for employment to a claimant during the claimant's base period or an employer who is responsible for an individual's wages pursuant to Iowa Code section 96.3, subsection 5, pertaining to workers' compensation benefits.

b. Chargeable employer. An employer who had base period wages accruing to the employer's account due to an employer liability determination.

24.1(13) *Benefit amount.*

a. Maximum weekly benefit amount. The highest weekly benefit amount provided in a state employment security law.

b. Minimum weekly benefit amount. The lowest weekly benefit amount for a week of total unemployment provided in a state employment security law.

c. Weekly benefit amount. The full amount of benefits a claimant is entitled to receive for a week of total unemployment.

24.1(14) *Benefit decision.* The decision reached by a lower or higher appeals authority with respect to an appealed claim. See also benefit determination, under determination.

24.1(15) *Benefit determination.* See determination.

24.1(16) *Benefit eligibility conditions.* Statutory requirements which must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(17) *Benefit formula.* The combination of mathematical factors specified in the state employment security law as the basis for computing an individual's weekly benefit amount and maximum benefit amount.

a. Annual wage formula. A benefit formula which uses the claimant's total wages in insured work for a one-year period for computing the claimant's maximum benefit amount.

b. High quarter formula. A benefit formula which uses, for determining a claimant's weekly benefit amount, the quarter of the base period in which the claimant's wages in insured work were highest.

24.1(18) *Benefits.* Money payments to an individual with respect to unemployment.

a. Regular benefits. Benefits payable to an individual under this or any other state law (including benefits payable to federal civilian employees and ex-servicemembers pursuant to 5 U.S.C., chapter 85) other than extended benefits.

b. Extended benefits. Benefits payable to an individual (including benefits payable to federal civilian employees pursuant to 5 U.S.C., chapter 85) for weeks of unemployment which begin in an extended benefit period, which is a period when extended benefits are paid in this state.

24.1(19) *Benefit wages.* See wages.

24.1(20) *Benefit year.* That period to which the limitation of maximum duration of benefits is applicable, a year or approximately a year.

24.1(21) *Benefit year, individual.* The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is the Sunday of the current week in which the claimant first files a valid claim unless the claim is backdated as allowed under paragraph 24.2(1)*"h."*

24.1(22) *Calendar week.* See week.

24.1(23) *Central office.* The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(24) Reserved.

24.1(25) *Claim.* A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

a. A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

b. Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(2) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

(3) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(4) *Appealed claim.* See appeal, administrative.

(5) *Combined wage claim.* A claim filed under the interstate wage combining plans. See interstate agreement.

(6) *Compensable claim.* A request for benefit payment which certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(7) *Contested claim.* A claim which has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(8) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application which certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(9) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(10) *Initial interstate claim.* A new or an additional interstate claim.

(11) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(12) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(13) *Mail claim.* Rescinded IAB 8/16/17, effective 9/20/17.

(14) *New claim.* An application for the establishment of a benefit year.

(15) *New interstate claim.* The first interstate claim filed by a claimant against a liable state which serves as a request for determination of insured status.

(16) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those which become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(17) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(18) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment which falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(19) *Second benefit year claim.* A new claim with an effective date for a second benefit year which is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(20) *Transitional claim.* Rescinded IAB 1/3/18, effective 2/7/18.

(21) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

(22) *Voice response continued claim.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(26) *Claimant.*

a. An individual who has filed a request for determination of insured status or a new claim, or

b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

24.1(27) Reserved.

24.1(28) *Claim series.* A series of claims filed for continuous weeks of unemployment or for a period of unemployment during which the lapse in compensability or in reporting is deemed by the state insufficient to interrupt the series.

24.1(29) *Compensable claim.* See claim.

24.1(30) *Compensable week.* See week.

24.1(31) *Compensation.* Same as benefits.

24.1(32) *Contested claim.* See claim.

24.1(33) *Continued claim.* See claim.

24.1(34) *Covered employment.* Same as insured work.

24.1(35) *Covered worker.* An individual who has earned wages in insured work.

24.1(36) *Day.* The period of time between any midnight and the midnight following.

24.1(37) *Department.* The chief executive officer of the department of workforce development is the director who shall be appointed by the governor with the approval of two-thirds of the members of the senate. It shall be the duty of the director to administer Iowa Code chapter 96.

24.1(38) *Determination.*

a. *Benefit determination.* A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. *Coverage determination.* A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law. See status determination.

c. *Determination of insured status.* A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. *Initial determination.* The first determination with respect to a claim or a request for determination of insured status.

e. *Monetary determination.* Same as determination of insured status.

f. *Nonmonetary determination.* A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

g. *Reconsidered determination.* Same as redetermination.

h. *Redetermination.* A determination made with respect to a claimant after reconsideration by the initial determining authority.

i. *Status determination.* A determination as to whether an employing unit whose status is not known is a subject employer.

24.1(39) *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(40) *Duration of benefits.* The number of weeks for which benefits are paid or payable for total unemployment in a benefit year. Because there may be deductible wages and other compensation, duration is often described in terms of the total amount of benefits arrived at by multiplying the weekly benefit amount by the number of weeks of total unemployment.

a. *Actual duration.* The number of full weeks of benefits received by an individual, or the equivalent thereof expressed in terms of dollars.

b. *Maximum duration.* The highest number of weeks of total unemployment for which benefits are payable to any individual in a benefit year under a state employment security law.

24.1(41) *Earnings limit.* An amount equal to the weekly benefit amount plus $15.

24.1(42) *Eligibility requirements.* Same as benefit eligibility conditions.

24.1(43) *Employment interview.* A conversation between an applicant and an interviewer directed toward obtaining and recording information pertinent to classification and selection, and giving information pertinent to job seeking.

24.1(44) *Employment office.* An office maintained by the department of workforce development in accordance with Iowa Code sections 96.12 and 96.25.

24.1(45) *Employment security administration fund.* See funds.

24.1(46) *Employment security law.* A body of law which establishes a free public employment service, or a system of unemployment insurance, or both and which may also establish other systems compensating for wage loss, such as temporary disability insurance in Iowa Code chapter 96.

24.1(47) *Employment security program.* The federal-state program comprising public employment services and unemployment insurance.

24.1(48) *Fact-finding interview.* A face-to-face or telephonic discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement containing information on a specific eligibility or disqualification issue. This differs from an eligibility review interview in that a specific issue must exist as a result of a statement made by either the claimant, the liable state, an employer, or the staff of the department.

24.1(49) *First UI, UCFE, or UCX payment.* A payment issued to a claimant for the first compensable week of unemployment in a benefit year.

24.1(50) *Full-time week.* See week.

24.1(51) *Funds.*

a. *Administrative funds.* Funds made available from federal, state, local and other sources to meet the cost of state employment security administration.

b. *Contingency fund.* An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state employment security agencies arising from increases in workload or other specified causes.

c. *Special employment security contingency fund.* A contingency fund established pursuant to Iowa Code section 96.13(3) into which all interest, fines, and penalties are paid.

d. *Employment security administration fund.* A special fund in the state treasury, established by state law, in which are deposited moneys granted by the manpower administration and monies from other sources, for the purpose of paying the cost of administering the state employment security program.

e. *Title V funds.* Funds appropriated by Congress to pay unemployment insurance benefits under Title V of the United States Code to federal, civilian and military employees.

f. *Unemployment fund.* A special fund established under a state employment security law for the receipt and management of contributions and the payment of unemployment account, clearing account, and unemployment trust fund account.

g. *Unemployment trust fund.* A fund established in the treasury of the United States which contains all moneys deposited with the treasury by state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

24.1(52) *Handbook.* The handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.1(53) *High quarter formula.* See benefit formula.

24.1(54) to **24.1(56)** Reserved.

24.1(57) *Individual base period.* See base period.

24.1(58) *Individual benefit year.* See benefit year.

24.1(59) *Initial claim.* See claim.

24.1(60) *Initial determination.* See determination.

24.1(61) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(62) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(63) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(64) *Interstate agreement.*

a. Interstate benefit payment plan. The plan under which each state acts as an agent for every other state in taking claims for individuals who are not in the state in which they earned their base period wages.

b. Interstate reciprocal coverage agreement. An administrative interstate agreement, permitted under most state employment security laws, which provides for the election of coverage of services under specified conditions which may or may not constitute an exception to the mandatory coverage provisions of the state law.

c. Wage-combining agreements. An interstate agreement which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

24.1(65) *Interstate claim.* See claim.

24.1(66) *Interstate claimant.* An individual who files a claim for benefits in an agent state on the basis of employment covered by the employment security law of a liable state.

24.1(67) *Benefit rights information.* Information provided to a claimant for the purpose of explaining the claimant's rights and responsibilities under the law. Such information may be given on a group basis or on an individual basis or the information may be provided electronically.

24.1(68) *Office.* Rescinded IAB 8/16/17, effective 9/20/17.

24.1(69) *Lag quarter.* The completed quarter between a claimant's base period and the quarter which includes the beginning date of such claimant's benefit year.

24.1(70) *Layoffs.* See separations.

24.1(71) *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state. See also agent state.

24.1(72) *Mail claim.* Rescinded IAB 8/16/17, effective 9/20/17.

24.1(73) *Mass separation.* The separation from a given employing unit of a large number of workers at approximately the same time and for a reason common to all such workers.

24.1(74) *Mass separation notice.* A report of a mass separation sent to the local workforce development center by an employer, stating the number of workers separated and listing their names and other required data. Such a notice serves as a substitute for individual separation notices.

24.1(75) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(76) *Maximum benefits.* The maximum total amount of benefits payable to a claimant during the claimant's benefit year.

24.1(77) *Maximum weekly benefit amount.* See benefit amount.

24.1(78) *Microfiche.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(79) *Military separations.* See separations.

24.1(80) *Minimum weekly benefit amount.* See benefit amount.

24.1(81) *Month.* The time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

24.1(82) *Multistate worker.* An individual who performs service for one employer in more than one state.

24.1(83) *New claim.* See claim.

24.1(84) *Noncovered employment.* Excluded employment, or employment for an employer below the size-of-firm coverage requirements of the state employment security law.

24.1(85) *Notice of separation.* A report submitted by an employer at the time when a worker is separated from employment, on which the employer indicates the dates of the last day worked, the separation date and the reason the worker was separated.

24.1(86) *Odd job earnings.* Any earnings which a claimant may have during a week of unemployment as a result of temporary work with an employing unit other than the claimant's regular employing unit.

24.1(87) *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

24.1(88) *Outstanding job order request.* An active request for referral of one or more applicants to fill one or more job openings in a single occupational classification; also, the record of such request.

24.1(89) *Clearance order.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(90) *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

24.1(91) *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

24.1(92) *Partial unemployment.* See week of unemployment.

24.1(93) *Part-time worker.* A person engaged in, or available only for, part-time work.

24.1(94) *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

24.1(95) Reserved.

24.1(96) *Qualifying employment.* The amount of insured work which an individual must have had within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(97) *Qualifying wages.* See wages.

24.1(98) *Quits.* See separations.

24.1(99) *Railroad unemployment insurance account.* An account, established pursuant to the Railroad Unemployment Insurance Act, maintained in the federal unemployment trust fund for the payment of benefits provided in that Act.

24.1(100) *Readout.* Printed data from the claimant database or other types of records stored in the computer.

24.1(101) *Reciprocal coverage agreement.* See interstate agreements.

24.1(102) *Reconsidered determination.* Same as redetermination—see determination.

24.1(103) *Referee appeals.* See appeal, administrative. (Administrative law judge)

24.1(104) *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

24.1(105) *Registration.* The process of applying for work through an office of the department of workforce development.

24.1(106) *Report to determine liability.* Same as status report.

24.1(107) *Reporting requirements.* The rules of procedures of the department of workforce development concerning the frequency and time of required reporting by claimants.

24.1(108) *Renewal.* The transfer from the inactive to the active file of the application of an applicant who is again considered to be available for referral to job openings.

24.1(109) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(110) *Selection.* The process of choosing a qualified applicant for referral to a job by carefully analyzing and comparing employer requirements with applicant interests and abilities.

24.1(111) *Self-employment.*

24.1(112) *Self-filing (of claim).* The partial or complete filling out of a claim form or request for determination of insured status by the claimant.

24.1(113) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. *Quits.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. *Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. *Other separations.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

24.1(114) *Short-time placement.* A placement in a job which the employer expects to involve work in each of three days or less, whether or not consecutive.

24.1(115) *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(116) *Status determination.* See determination.

24.1(117) *Supplemental benefit payment.* A payment issued for the sole purpose of adjusting an underpayment for one or more previous weeks.

24.1(118) *Taxable wages.* See wages.

24.1(119) *Total unemployment.* See week of unemployment.

24.1(120) Reserved.

24.1(121) *Transient.* Rescinded IAB 1/3/18, effective 2/7/18.

24.1(122) *Unemployment fund.* See funds.

24.1(123) *Unemployment trust fund.* See funds.

24.1(124) *Unemployment trust fund account.* See accounts.

24.1(125) *Valid claim.* See claim.

24.1(126) *Verification.* The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

24.1(127) *Visiting claimant.* Rescinded IAB 1/3/18, effective 2/7/18.

24.1(128) *Wage combining agreement.* See interstate agreement.

24.1(129) *Wage credits.* Wages earned in insured work.

24.1(130) *Wages.* Average weekly wages.

a. For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

b. For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

24.1(131) *Qualifying wages.* The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(132) *Taxable wages.* Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

24.1(133) Reserved.

24.1(134) *Weekly indemnity insurance benefits.* Payment for nonoccupational illness or injury pursuant to a benefit plan implemented by an employer.

24.1(135) *Week.* A seven-day period beginning at 12:01 a.m. on Sunday and terminating at midnight on the following Saturday.

a. *Calendar week.* A period of seven consecutive days usually ending at Saturday midnight, used by some state employment security agencies as a unit in the measurement of employment or unemployment.

b. *Compensable week.* A week for which benefits have been claimed.

c. *Full-time week.* The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

24.1(136) *Weekly benefit amount.* See benefit amount, or,

24.1(137) *Weekly benefit amount.* The compensation payable to an individual, with respect to employment, under the employment security law of any state.

24.1(138) *Week of unemployment.* A week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount (usually the weekly benefit amount), or,

24.1(139) *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

a. *Week of partial unemployment.* A week in which an individual worked less than the regular full-time hours for such individual's regular employer, because of lack of work, and earned less than the weekly benefit amount (plus the partial earnings allowance, if any, in the state's definition of unemployment) but more than the partial earnings allowance, so that, if eligible for benefits, the claimant received less than such claimant's full weekly benefit amount plus $15.

b. *Week of part total unemployment.* A week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual's benefit payment.

c. *Week of total unemployment.* A week in which an individual performs no work and earns no wages.

24.1(140) *Workload.* The measure of the volume of work for each functional area of the state agency; i.e., the number of contribution (payroll) reports processed, the number of claims taken, the number of applications for employment.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5)*"c,"* 96.6, 96.7(2)*"a"*(2), 96.11, 96.19(16), and 96.23.

[**ARC 3116C**, IAB 6/7/17, effective 7/12/17; **ARC 3248C**, IAB 8/2/17, effective 9/6/17; **ARC 3265C**, IAB 8/16/17, effective 9/20/17; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

b. When filing an initial claim for benefits, an individual must provide the following information to the department:

(1) The name and complete mailing address of such individual's last employing unit or employer.
(2) The location of the last job.
(3) Last day of work.
(4) The reason for separation from work.
(5) That such individual is unemployed.
(6) That the individual registers for work.
(7) The individual's last job occupation.

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than $120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(9) The individual's social security number and alien registration number, if applicable.

(10) Such other information as required by the department.

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document work searches made either in-person, online or by submitting a resumé.

(5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of

workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

d. Reserved.

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

f. After the initial claim has been filed, the claimant will receive from the local office or the administrative office a Form 65-5318, which is a notice of the action taken on the claim, and if such claimant is eligible for benefits this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;

3. That the individual indicates the number of employers contacted for work;

4. That the individual knows the law provides penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. Other information required by the department.

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;

2. The claimant filed an interstate claim against another state which has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

i. An individual shall be entitled to partial benefits for any week of less than full-time work, provided the wages earned during such week are less than the individual's weekly benefit earning limit, plus $15. If the individual has been placed on reduced employment the individual may be entitled to

partial benefits, and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

j. Reserved.

k. Any individual who is disqualified for benefits because of the individual's failure to report as directed to file a claim following the date specified may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

24.2(2) Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

a. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitance. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, or union membership card or supply personally identifying information.

c. If a claim was filed in a previous quarter and was determined not eligible because of no wage records, or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously has filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker shall explain or send notice to the claimant that another claim filed in the same quarter would also be determined as ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

d. If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim shall be taken.

e. Partially unemployed claims.

(1) A partially unemployed individual shall file a claim for benefits in the same manner as an initial claim for unemployment insurance.

(2) Reporting wages. A partially unemployed individual shall report all wages which are earned for each week benefits are claimed.

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus $15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

f. If the check of the files does not disclose a monetarily valid claim in another state, a new claim shall be taken.

24.2(3) Filing a claim for unemployment insurance benefits (interstate only).

a. Initial interstate claims. All interstate claimants must file an Iowa claim electronically or through a department representative.

b. When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the department shall require an interstate claimant to complete and file an Initial Interstate Claim, Form 61-1000(IB-1), unless otherwise directed by the interstate handbook.

24.2(4) Cancellation of unemployment insurance claim.

a. A request for cancellation of an unemployment insurance claim may be made by the individual and be directed to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

b. A cancellation request which is the result of employer coercion or intimidation shall be denied and the employer could be subjected to serious misdemeanor charges.

c. Cancellation requests within the ten-day protest period. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

f. Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

g. All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1)*"h,"* 96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.19(4), 96.19(24), and 96.20.

[**ARC 3116C**, IAB 6/7/17, effective 7/12/17; **ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3248C**, IAB 8/2/17, effective 9/6/17; **ARC 3265C**, IAB 8/16/17, effective 9/20/17; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3401C**, IAB 10/11/17, effective 11/15/17; **ARC 3648C**, IAB 2/14/18, effective 3/21/18]

871—24.3(96) Social security number needed for filing.

24.3(1) The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. A claim cannot be processed without a social security number.

24.3(2) The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3647C**, IAB 2/14/18, effective 3/21/18]

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is provided to each individual filing an initial claim for benefits to explain those provisions in the law and rules which govern the individual's monetary

eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights information may be given by an individual or group type interview or by telephone or electronically. A Form 70-6200, Facts About Unemployment Insurance, will be provided which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state which will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

24.4(3) *Federal benefits.* Rescinded IAB 8/6/03, effective 9/10/03.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) *Mass separation.* A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

a. The special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

b. If other facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

(1) Interested employer involved.

(2) Bona fide union which represents the workers.

(3) Public facility (i.e., courthouse, city hall).

24.5(2) *Cooperation of employers.* To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center shall provide the information to legal counsel for the unemployment insurance services division so that the mass claim separation can be coordinated between the affected parties. This information should include:

a. The number of workers to be separated.

b. The date of separation and, if staggered, the number on each date.

c. Reason for layoff.

d. Its probable duration.

e. If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.

f. Rescinded IAB 8/6/03, effective 9/10/03.

g. Reserved.

h. If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rules 871—24.16(96) and 871—24.17(96).

24.5(3) *Methods of mass claim taking.* The department may adopt a plan, which is based on the employer's workers, the circumstances and the size of the layoff.

24.5(4) *Announced mass separation.* If a mass separation occurs about which the department of workforce development has not been advised in advance in sufficient time to preschedule claimants, then the claimants will be advised of the alternative methods to file their claims as quickly as possible. The department will develop a plan to provide service to the claimants as quickly as possible under the circumstances.

This rule is intended to implement Iowa Code section 96.6(1).

[**ARC 3265C**, IAB 8/16/17, effective 9/20/17]

871—24.6(96) Profiling for reemployment services.

24.6(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

24.6(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

24.6(3) Reemployment services may include, but are not limited to, the following:

a. An assessment of the claimant's aptitude, work history, and interest.

b. Employment counseling regarding reemployment approaches and plans.

c. Job search assistance and job placement services.

d. Labor market information.

e. Job search workshops or job clubs and referrals to employers.

f. Résumé preparation.

g. Other similar services.

24.6(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

24.6(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

b. Reserved.

This rule is intended to implement Iowa Code section 96.4(7).

871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.

24.7(2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

a. Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and

b. Did not receive wages from insured work for:

(1) Three or more calendar quarters in the base period, or

(2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

24.7(4) Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.

a. *Allowances.* When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

b. *Disqualifications.* The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

24.7(5) The individual shall be requested to complete the Affidavit and Questionnaire, Form 60-0286, which requests the following information:

a. Individual's name and social security number.

b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(6) The department will mail the redetermined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 871—24.8(96).

[**ARC 3248C**, IAB 8/2/17, effective 9/6/17]

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Issuance of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. The Form 65-5317, Notice of Claim, and the Form 68-0221, Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) Rescinded IAB 2/10/99, effective 3/17/99.

24.8(3) Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

b. A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

c. Rescinded IAB 8/2/17, effective 9/6/17.

d. Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

24.8(4) Mailing of determinations, redeterminations and decisions to employing units.

a. An employing unit which has filed a timely response or protest to the notice of the filing of an initial claim shall be notified in writing of the determination as to the individual's rights to benefits. If an employing unit of the individual has submitted timely information affecting the individual's

rights to benefits, including facts which disclose that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit shall be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision shall contain a statement setting forth the employing unit's right of appeal.

c. Determinations as to an individual's right to benefits, decisions as to the cause of termination of the individual's employment, decisions as to an employing unit's experience record and correspondence related thereto shall be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was mailed; or

(2) The address requested by the employing unit on the document filed with the department in response or protest to the notice of the filing of an initial claim;

(3) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative shall comply, provided there is on file with the department an approved authorization (power of attorney) designating the agent to represent the employing unit.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.9(96) Determination of benefit rights.

24.9(1) *Monetary determinations.*

a. When an initial claim for benefits is filed, the department shall send to the individual claiming benefits, including a notification statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

c. If newly discovered facts are obtained by the department or a written request for reconsideration is filed by the individual and is timely, an unemployment insurance representative shall examine the facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the monetary record shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual within ten days of the date of the mailing of the redetermination specifying the grounds of objection to the redetermined monetary record. For the purposes of this paragraph, if the newly discovered facts obtained by the department would result in a change of the individual's maximum benefit amount of $25 or less, the department representative is not required to issue a redetermination unless a redetermination is requested by the individual, the employer, or a representative of another state or federal agency responsible for the administration of an unemployment insurance law.

d. For the purposes of this subrule, the appeal period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday, or holiday. Also, failure of an individual to properly complete and sign any document relating to the adjudication of a claim shall result in the return of the document to the individual for proper completion or signature; however, an extension of the appeal period to allow for the return of the documents shall not be granted.

24.9(2) *Nonmonetary determinations.*

a. When a protest of an initial claim for benefits is filed, the department shall mail to the individual claiming benefits, and the most recent or any other base period employing unit, Form 65-5323, Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with

the party's equipment, may record (video or audio) the proceedings. All participants must be informed of the recording of the interview. The recording of the interview must not be disruptive or distracting in nature.

c. Each of these decisions of the unemployment insurance representative shall constitute a final decision unless there are newly discovered facts which affect the validity of the original decision or a written request for reconsideration is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the decision specifying the grounds of objection to the decision.

d. If newly discovered facts are obtained by the department or a written request for reconsideration is timely filed by the individual, or the most recent or any other base period employing unit, an unemployment insurance representative shall examine the newly discovered facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the decision shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the redetermination specifying the grounds for objection to the redetermined decision.

e. For the purposes of this subrule, the protest period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday or holiday. Also, failure by an individual or an employing unit to properly complete or sign any document relating to the adjudication of a claim shall result in the return of the document to the individual or employing unit for proper completion or signature; however, an extension of the protest period to allow for the return of the document shall not be granted.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3265C**, IAB 8/16/17, effective 9/20/17]

871—24.10(96) Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

24.10(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

24.10(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division

administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

24.10(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)*"b"* as amended by 2008 Iowa Acts, Senate File 2160.

871—24.11(96) Eligibility review program.

24.11(1) *Purpose.* The eligibility review program is used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

24.11(2) *Individuals requiring an eligibility review.*

a. Selected individuals claiming intrastate benefits and interstate benefits shall be required to complete the eligibility review Form 60-0232 at times determined by the department after they have filed an initial or additional claim.

b. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(3) *Eligibility review form.* Form 60-0232 contains information relating to eligibility and availability furnished by and to the individual, instructions and advice on reemployment that is given to the individual and the results of the individual's job search efforts.

a. The Eligibility Review Form 60-0232 encourages individuals to record information that bears directly on reemployment prospects and continued eligibility data.

b. It should conserve benefit funds through early identification of individuals who are restricting their availability.

c. It assures that job-ready individuals receive maximum exposure to available jobs by a workforce development center.

24.11(4) *Eligibility review procedure.*

a. After an individual has claimed a number of weeks of intrastate benefits as designated by the department, the workforce development center shall receive a computer selected list of individuals claiming benefits. The list shall be retained in the workforce development center so work search assistance and reemployment services can be provided as needed by the claimant.

b. No eligibility review will be performed on an individual unless monetary and nonmonetary eligibility are established.

c. An Eligibility Review Questionnaire shall be mailed or provided to the individual.

d. A copy of the Eligibility Review Questionnaire shall be sent to the workforce development center only on an individual who is in an active status at the time of its printing. If the individual fails to respond to the Eligibility Review Questionnaire within the designated period of time printed on the questionnaire, the workforce development center shall issue a Form 60-0131, Notice to Report. If the individual does not respond after this action has been taken, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. In cases of illness, injury or pregnancy, an unemployment insurance representative shall determine when and if a personal appearance shall be conducted. The representative shall be responsible for determining continuing eligibility or noneligibility of the individual based on the information obtained on the Form 60-0141, Request for Medical Report, or the facts presented during the interview. If the representative believes an additional Form 60-0141 may be needed, the representative shall initiate the request in the regular manner. Special attention shall be given to work search, i.e., number of contacts, types of contacts and the available job market information.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

g. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(5) *Scheduling first eligibility review interview.* Individuals shall be scheduled for an eligibility review interview if:

They are in demand occupations and still unemployed; it appears that they need help in finding work or their eligibility is suspect.

24.11(6) *Eligibility Review Form 60-0232.*

a. The Eligibility Review Form shall be completed by the individual. This form documents the information provided by the individual. The unemployment insurance representative reviews the information to determine if there are any disqualifying issues that need to be reviewed by conducting an interview in the local office or by telephone. If the interview is conducted by telephone, the individual may waive the opportunity for an in-person interview. The form also contains the individual's work search plan and the unemployment insurance representative's advice and instruction to the individual concerning eligibility requirements and work search plans.

b. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(7) *Conducting the first eligibility review interview.*

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview as recorded on the form must convey to the individual the requirements that must be satisfied to maintain eligibility insofar as work search and availability are concerned.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy considering local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This shall be based on expected return to work date, job openings in area, local labor market conditions, etc.

24.11(8) *Eligibility Review Statistics, Form 68-0150.* Rescinded IAB 8/6/03, effective 9/10/03.

This rule is intended to implement Iowa Code sections 96.4(3) and 96.6(1).

871—24.12 Reserved.

871—24.13(96) Deductible and nondeductible payments.

24.13(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount

of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96). The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

24.13(2) *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96):

a. *Holiday pay.* However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

b. *Commissions.* However, the commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

c. *Incentive pay.* However, the incentive payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

d. *Strike pay.* However, the strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

e. *Remuneration other than cash.* The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

f. *Stand-by pay.* When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay which is deductible from benefits when earned by the individual during the period when the individual is claiming benefits.

g. *Tips or gratuity.* However, the amount of the tips or gratuity is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

24.13(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.13(4) *Nondeductible payments from benefits.* The following payments are not considered as wages and are not deductible from benefits:

a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

d. Payment for unused sick leave.

e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed service.

f. Supplemental unemployment benefit plans approved by the department. See 871—subrule 23.3(1), paragraph *"e,"* for criteria and employer procedure for obtaining department approval.

g. Pension to the blind.

h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

i. Compensation for military service-connected disability from the Department of Veterans Affairs.

j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits shall not be deductible during the period in which the individual is claiming benefits.

l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

n. Federal social security benefit and social security disability payments.

o. Payments conditional upon the release of any rights.

p. Payments requiring the individual to work through a specific day to be eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.19(38).

[**ARC 1367C**, IAB 3/5/14, effective 4/9/14; **ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—24.14 and **24.15** Reserved.

871—24.16(96) Vacation pay.

24.16(1) If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term "vacation pay" shall include paid time off and annual leave payments.

24.16(2) If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the department before the period of extension begins.

24.16(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

24.16(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).

[**ARC 1367C**, IAB 3/5/14, effective 4/9/14]

871—24.17(96) Vacation pay procedure.

24.17(1) Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, and 62-2049 received in the administrative office shall be routed to the appropriate office for the following action:

a. Upon receipt of the vacation information, the unemployment insurance representative shall compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies with the vacation information provided by the employer that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant shall be afforded the opportunity to present facts and evidence, which may include an informational fact-finding interview scheduled by the department. The unemployment insurance representative may afford the employer the opportunity to present additional facts and evidence after ascertaining such from the claimant. If the employer is afforded such an opportunity to provide additional facts and evidence, the unemployment insurance representative shall also afford the claimant the opportunity to present additional facts and evidence.

b. After affording the claimant an opportunity to present facts and evidence regarding the receipt of vacation pay, and potentially affording the employer and the claimant an opportunity to provide additional facts and evidence, the representative shall consider all information submitted by the interested parties and issue to the employer and the claimant the appropriate decision concerning the vacation pay. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.

c. If the computer record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, the unemployment insurance representative shall take no further action on the weeks not claimed.

d. The claimant shall be instructed to only report vacation pay applicable to the first week. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

24.17(2) Reserved.

This rule is intended to implement Iowa Code section 96.5(7).

[**ARC 3116C**, IAB 6/7/17, effective 7/12/17]

871—24.18(96) Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus $15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus $15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

871—24.19(96) Determination and review of benefit rights.

24.19(1) Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

24.19(2) Each interested party will be afforded the opportunity to have a fact-finding interview by telephone regarding matters which are scheduled for a hearing. An interested party may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with

Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

24.19(3) Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the benefits bureau may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

[**ARC 3116C**, IAB 6/7/17, effective 7/12/17; **ARC 3265C**, IAB 8/16/17, effective 9/20/17]

871—24.20 and **24.21** Reserved.

871—24.22(96) Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

24.22(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.22(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

b. Job test. The best method of testing availability for work is an offer of work or job test. If a job test is not possible because of lack of a suitable offer, the active search for work is relied on and conclusions are likely to be based entirely on the fact that the individual did or did not make a search, without regard to the fact that the individual's personal efforts had little probability of success.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

d. Jury duty. The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but is a public duty required by law. Jury duty does not render the individual as employed and

ineligible for benefits even though it may involve the individual full-time. Witness and jury fees will be considered as reimbursement for expenses and not as wages.

e. Company employment office. The department is not bound by a union/company contract that requires the individual to report at the company employment office. The individual is an independent agent seeking work, and may be found available, if an otherwise diligent search of work is made.

f. Part-time worker, student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

g. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements of Iowa Code section 96.4(3).

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)*"a"* and *"b."* An individual who is willing to accept only on-call work is not considered to be available for work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

k. Effect of religious convictions on Sabbath day work. An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses

to work on the Sabbath designated by the individual's religion, because of conscientious observance of the Sabbath as a matter of religious conviction, is also deemed to have good cause for refusing the work.

l. *Available for work.* To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist, or if that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

m. *Restrictions and reasonable expectation of securing employment.* An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

n. *Corporate officers.* To be considered available, the corporation officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work. The reported efforts of a corporate officer to seek work should be studied to distinguish those directed toward obtaining work for the officer as an individual and those directed to obtaining work or business for the corporation. Any effort to obtain business for the corporation to perform is a service to the corporation and is not evidence of the individual's own availability for work.

o. *Lawfully authorized work.* An individual who is not lawfully authorized to work within the United States will be considered not available for work.

24.22(3) *Earnestly and actively seeking work.* Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. *Basic requirements.* An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department

considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

24.23(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

24.23(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(7) Where an individual devotes time and effort to becoming self-employed.

24.23(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.23(9) Reserved.

24.23(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

24.23(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

24.23(12) If a claimant is in jail or prison, such claimant is not available for work.

24.23(13) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(14) An individual is deemed not available for work because such individual cannot be contacted by the department for referral to possible employment.

24.23(15) Where a claimant has demanded a wage in excess of the wages most commonly paid in such claimant's locality for the suitable work the individual is seeking.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.23(19) Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.23(21) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

24.23(24) Rescinded IAB 8/2/17, effective 9/6/17.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

24.23(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.23(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

24.23(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training.

24.23(31) Where the claimant spent the major portion of the period traveling while relocating.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38)*"c"* are met.

24.23(33) Where the claimant left employment prior to a scheduled date of layoff when such claimant could have remained in employment during this period. No disqualification may be imposed in accordance with Iowa Code section 96.5(1)*"g"* for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

24.23(36) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

24.23(38) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(39) Where the work search or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute

for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

a. First offense—six weeks penalty.

b. Second offense—nine weeks penalty.

c. Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

24.23(40) Reserved.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38)*"c"* and 96.29.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.24(96) Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(1) *Bona fide offer of work.*

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

24.24(2) *Job within claimant's capabilities.*

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

b. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(3) *Each case decided on its own merits.* Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

24.24(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause

for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

24.24(5) *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

24.24(6) *Claimant physically unable to perform job.* A medical certification from a medical practitioner must be submitted to support the claimant's statement that work offered is not suitable because of the claimant's physical condition.

24.24(7) *Gainfully employed outside of area where job is offered.* Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

24.24(8) *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.24(9) Reserved.

24.24(10) *Distance to new job.* Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

24.24(11) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

24.24(12) *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant shall be deemed to have refused suitable work as contemplated by the statute.

24.24(13) *Claimant moved to another state.* A claimant who moves to another state shall not be subject to disqualification for refusal to return to a previously held job.

24.24(14) *Employment offer from former employer.*

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)*"b"* are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

24.24(15) *Suitable work.* In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual's physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual's customary occupation.

g. Distance from the available work.

h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

l. Whether the individual would be required to join or resign from a labor organization.

24.24(16) *Disabled accessibility to job.* A job offer shall not be suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.19(38), and 96.29.

871—24.25(96) Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs *"a"* through *"i,"* and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.25(2) The claimant moved to a different locality.

24.25(3) The claimant left to seek other employment but did not secure employment.

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

24.25(5) Reserved.

24.25(6) The claimant left as a result of an inability to work with other employees.

24.25(7) The claimant failed to return to work upon the termination of a labor dispute.

24.25(8) The claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant shall be considered to be on leave from employment. It shall only be considered a voluntary quit issue when upon release from military service such claimant does not return to such claimant's employer to apply for employment within 90 days; provided, that such person shall give evidence to the employer of satisfactory completion of such military service and further provided that such person is still qualified to perform the duties of such position.

24.25(9) Reserved.

24.25(10) The claimant left employment to accompany the spouse to a new locality. No disqualification shall be imposed when Iowa Code section 96.5(1)*"b"* is applicable.

24.25(11) The claimant left to get married.

24.25(12) The claimant left without notice during a mutually agreed upon trial period of employment.

24.25(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.25(14) Reserved.

24.25(15) Reserved.

24.25(16) The claimant is deemed to have left if such claimant becomes incarcerated.

24.25(17) The claimant left because of lack of child care.

24.25(18) The claimant left because of a dislike of the shift worked.

24.25(19) The claimant left to enter self-employment.

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(21) The claimant left because of dissatisfaction with the work environment.

24.25(22) The claimant left because of a personality conflict with the supervisor.

24.25(23) The claimant left voluntarily due to family responsibilities or serious family needs.

24.25(24) The claimant left employment to accept retirement when such claimant could have continued working.

24.25(25) The claimant left to take a vacation.

24.25(26) The claimant left to go to school.

24.25(27) The claimant left rather than perform the assigned work as instructed.

24.25(28) The claimant left after being reprimanded.

24.25(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

24.25(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

24.25(31) The claimant left work to keep from earning enough wages during the year to adversely affect claimant's receipt of federal old-age benefits (social security).

24.25(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

24.25(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

24.25(34) The claimant left because work was irregular due to weather conditions; however, this working condition was not unusual in claimant's type of employment.

24.25(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

b. Obtain certification of release for work from a licensed and practicing physician;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

24.25(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

24.25(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

24.25(39) Reserved.

24.25(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, 96.19(6)*"a,"* and 96.19(38).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.26(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.26(2) The claimant left due to unsafe working conditions.

24.26(3) The claimant left due to unlawful working conditions.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

24.26(5) The claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.26(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph *"b"* an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

24.26(7) Reserved.

24.26(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

24.26(9) The claimant left employment upon the advice of a licensed and practicing physician for the sole purpose of taking a family member to a place having a different climate and subsequently returned to the claimant's regular employer and offered to perform services, but the claimant's regular or comparable work was not available. However, during the time the claimant was at a different climate the claimant shall be deemed to be unavailable for work notwithstanding that during the absence the claimant secured temporary employment. (Family is defined as: wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.)

24.26(10) A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

24.26(11) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.26(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.26(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

24.26(14) Rescinded IAB 7/28/99, effective 9/1/99.

24.26(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

24.26(17) Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17)*"a"*(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)*"a"*(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board,* 883 N.W.2d 179.

24.26(18) Reserved.

24.26(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

24.26(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

24.26(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

24.26(24) Reserved.

24.26(25) Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

24.26(26) Reserved.

24.26(27) Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

24.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

[**ARC 3401C**, IAB 10/11/17, effective 11/15/17]

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

[**ARC 3248C**, IAB 8/2/17, effective 9/6/17]

871—24.28(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(1) The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(2) The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if subsequent to the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(3) Reserved.

24.28(4) Reserved.

24.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

24.28(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.28(7) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.28(8) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1)*"a."*

871—24.29(96) Business closing.

24.29(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.29(2) Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

24.29(3) Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative completes a Form 60-0240, Verification of Business Closing, and refers Form 60-0240 to the field audit section for assignment to a field auditor who verifies the business closing. A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation. Upon return of the Form 60-0240 from the field audit section, an unemployment insurance representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing based on the results of the investigation.

871—24.30 Reserved.

871—24.31(96) Subsequent benefit year condition.

24.31(1) The claimant must have been paid benefits on a previous claim.

24.31(2) If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, during or subsequent to that year, have worked in (except in back pay awards) and have been paid wages for insured work totaling at least eight times the claimant's weekly benefit amount from the claimant's previous benefit year as of the end of the benefit year end date. Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.31(3) Insured work means insured work in any state.

24.31(4) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.31(5) The amount equal to eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work need not be in addition to the qualifying wages for the establishment of a second benefit year.

24.31(6) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling eight times the claimant's weekly benefit amount from the claimant's previous benefit year during or subsequent to the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.32(96) Discharge for misconduct.

24.32(1) *Definition.*

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

b. Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.32(2) Reserved.

24.32(3) *Gross misconduct.*

a. For the purposes of these rules, gross misconduct shall be defined as misconduct involving an indictable offense in connection with the claimant's employment, provided that such claimant is duly convicted thereof, has signed a statement admitting that such claimant has committed such act, or has admitted to the department that claimant has committed such act.

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than $500 or by imprisonment in the county jail for more than 30 days.

c. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

24.32(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty

without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

24.32(5) *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

24.32(6) *False work application.* When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

24.32(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

24.32(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

24.32(9) *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

[**ARC 3401C**, IAB 10/11/17, effective 11/15/17]

871—24.33(96) Labor disputes.

24.33(1) *Definition.* As used in sections 96.5(3)*"b"*(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

24.33(2) *Initial requirements—workforce development center.*

a. As soon as the workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report on Form 68-0535, Labor Dispute Report, shall be sent to the administrative office of the department of workforce development, attention: legal counsel, unemployment insurance services division, advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted to the legal counsel, unemployment insurance services division, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on Form 68-0535.

c. When the labor dispute or work stoppage is terminated subsequent to the filing of the initial Form 68-0535, the legal counsel, unemployment insurance services division, shall be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, include the names and addresses of the employers who are involved in the labor dispute in your report. Include also the name and address of the association and the name of the association official who can furnish information about the work stoppage.

e. In taking initial claims in which there is a labor dispute, the workforce development center will complete an initial application for unemployment, Form 60-0330, Application for Job Placement

Assistance and/or Job Insurance, in the normal manner and will also include the union name and local union number.

f. If a claim notice is inadvertently returned by the employer to the workforce development center stating there is a labor dispute, the protest with the postmarked envelope attached shall be transmitted to the unemployment insurance service center.

g. If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement must be taken from each individual claiming benefits.

h. Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

i. Statements from each individual claiming benefits will be taken whenever the work stoppage is considered as a nonunion stoppage, meaning no union representation at the premises of the employer. In such cases, each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

j. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues which caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

k. The requirements in subrules 24.33(1) and 24.33(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

l. During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has been discharged from employment, and an additional claim must be taken if the individual continues in claim status.

m. When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the caller for inclusion in the labor dispute report to the unemployment insurance services division.

n. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on Form 65-5317, Notice of Claim. The employer will receive a copy of the decision which may be appealed.

o. Form 65-5317, Notice of Claim Filing, will be used by the employer to report total unemployment due to strike, lockout or other labor dispute.

p. Employer shall use Form 60-0154, Notice of Separation or Refusal of Work, or the electronic version of that form, to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal. Form 60-0154 shall not be used by employers to report labor disputes because the document is not designed for that type of an employment separation or work refusal.

24.33(3) *Initial determination.*

a. In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division shall promptly review the evidence submitted, and such additional evidence as may be required, and shall make a decision upon the issues involved under that subsection.

b. The representative of the unemployment insurance services division shall promptly notify all interested parties to the claim of the decision. Said parties shall have ten days, from the date of mailing the decision to the last known address of record, to appeal the decision.

[**ARC 3248C**, IAB 8/2/17, effective 9/6/17; **ARC 3265C**, IAB 8/16/17, effective 9/20/17]

871—24.34(96) Labor dispute—policy.

24.34(1) Reserved.

24.34(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

24.34(3) The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

a. If the relationship is severed by the employer, Iowa Code section 96.5(2) concerning discharge for misconduct shall govern.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) concerning voluntary leaving shall govern.

24.34(4) An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute, must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

24.34(5) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute shall be deemed to be involved in such labor dispute.

24.34(6) If an initial determination by the representative of the unemployment insurance services division of a labor dispute issue is appealed, the case shall be assigned to an administrative law judge, who shall receive the testimony of any party to the hearing and shall issue a decision on the labor dispute. Such decision may be appealed in conformity with these rules to the employment appeal board of the Iowa department of inspections and appeals.

24.34(7) An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual shall be deemed to have involuntarily left employment.

a. The division shall presume that any strike or lockout is being conducted in a lawful manner unless evidence to the contrary has been introduced. The division shall presume that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. The division shall presume that where an injunction has been sought against actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct and such injunction shall have been denied on the basis that actual or threatened unlawful conduct has not been established that the picket line is peaceful unless evidence is introduced which establishes the violent nature of picket line activity.

c. If an injunction is obtained, the division shall presume the picket line is peaceful as of the date the injunction is issued unless evidence is introduced which proves the contrary proposition.

24.34(8) A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout and the claimants shall not be disqualified because of a labor dispute.

b. A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

24.34(9) To constitute a labor dispute there must be a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment shall be deemed to have voluntarily quit.

24.34(10) When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

24.34(11) Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

a. Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

b. Suitable if the offer was made to a former employee, who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) shall apply.

c. Suitable if the offer is made to a new employee, who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

24.34(12) Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs relationship with employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

871—24.35(96) Date of submission and extension of time for payments and notices.

24.35(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)*"a"* and *"b,"* on the date it is received by the division.

24.35(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

24.35(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

24.35(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

[**ARC 3116C**, IAB 6/7/17, effective 7/12/17; **ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.36(96) Interstate benefits.

24.36(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals absent from the state(s) in which wage credits were earned.

24.36(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state law and rules and shall be in substantial compliance with those rules promulgated by the United States Department of Labor as published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650.

871—24.37(96) Payment of benefits to interstate claimants.

24.37(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

a. Applicability. This regulation shall govern the department in its administrative cooperation with other states adopting a similar regulation for the payment of unemployment insurance benefits to interstate claimants.

b. Definitions. As used in this rule unless the context clearly requires otherwise:

(1) *"Interstate benefit payment plan."* This is the plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) *"Interstate claimant."* This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) *"State."* This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

(4) *"Agent state."* This means any state in which an individual files a claim for benefits from another state.

(5) *"Liable state."* A liable state is any state against which an individual files, from another state, a claim for benefits.

(6) *"Benefits."* This is the compensation payable to an individual, with respect to unemployment, under the employment security law of any state.

(7) *"Week of unemployment."* This is any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

c. Registration for work.

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, rules, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

d. Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

(3) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims filed on or after July 5, 1953.

e. Claim for benefits.

(1) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) Rescinded IAB 8/6/03, effective 9/10/03.

f. Determination of claims.

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

g. Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

24.37(2) *Extended benefits interstate claims.* When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).

871—24.38(96) Combined wage claim.

24.38(1) *Purpose of plan.* The combined wage program is to enable an unemployed worker with covered employment or wages in more than one state to combine all such employment and wages in one state in order to qualify for benefits or to receive increased benefits.

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations. This includes the District of Columbia, U.S. Virgin Islands and the Commonwealth of Puerto Rico.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the paying state shall be the benefit year, base period, qualifying wages, benefit rate, and duration of benefits applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan shall be determined by the paying state after the combining of all wages available from the transferring states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

d. All other provisions of the unemployment compensation laws and rules of the state agency of the paying state shall be applied to the combined wage claim.

e. The state in which the claim is filed will be the paying state except in those cases in which the individual does not qualify after the transfer has been completed or if the claimant meets the definition of a commuter.

24.38(2) *Exception to combining wage credits.* Under the following circumstances, wages and employment are not transferable to the paying state:

a. Any employment and wages which have been transferred to any other paying state and not returned unused.

b. Wages that have been used by the transferring state as the basis of a monetary determination which established a benefit year.

c. Any employment and wages that have been canceled or are unavailable as a result of a transferring state determination made prior to the request for transfer.

24.38(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits which said claimant will be paid.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—24.39(96) Department-approved training. The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) The claimant must make application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The date the training will be complete or the degree will be obtained.

d. The occupation which the training is allowing the claimant to maintain or pursue.

e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

a. The educational establishment must be a college, university or technical training institution.

b. The training must be completed 104 weeks or less from the start date.

c. The individual must be enrolled and attending the training program as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be

able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—24.40(96) Training extension benefits.

24.40(1) The purpose of training extension benefits is to provide the individual with continued eligibility for benefits so that the individual may pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the individual's employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations.

24.40(2) The weekly benefit amount shall be pursuant to the same terms and conditions as regular unemployment benefits and the benefits shall be for a maximum of 26 times the weekly benefit amount of the claim which resulted in eligibility. Both contributory and reimbursable employers shall be relieved of charges for training extension benefits.

24.40(3) The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's website and at workforce centers.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one which requires a high degree of training in the sciences, engineering, or other advanced learning area and has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

24.40(4) The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.

24.40(5) Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted, in order to maintain eligibility for training extension benefits.

This rule is intended to implement 2009 Iowa Code Supplement section 96.3(5).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—24.41(96) Unemployed parents program (FIP/UP). Under Public Law 94-566, an unemployed parent who is eligible for both unemployment insurance and family investment program/unemployed

parent (FIP/UP) shall be required to collect any unemployment insurance to which the individual is entitled before receiving any payments under the FIP/UP program.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.42(96) Retention of DHS referral form. When an unemployed parent presents the DHS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete an application for job placement assistance and/or employment insurance benefits.

24.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to human services.

24.42(2) A FIP/UP claimant may have the claim protested which can affect eligibility. Human services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.43 and **24.44** Reserved.

871—24.45(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618), shall be determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, chapter 29, parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.46(96) Extended benefits.

24.46(1) *Purpose.* Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to find during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

24.46(2) *Determination of when extended benefits are paid.*

a. *When paid.* The state "on" indicator determines when extended benefits are paid in this state. A state "on" indicator is in effect during a week for which the rate of insured unemployment is 5 percent or greater and 120 percent or greater than the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

b. *When not paid.* The state "off" indicator determines when extended benefits are not paid in this state. A state "off" indicator is in effect during a week for which the rate of insured unemployment is less than 5 percent or less than 120 percent of the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

c. *Period of payment.* The extended benefit period is the period of time when extended benefits are paid in this state. An extended benefit period begins with the third week following a week for which there is a state "on" indicator in effect. An extended benefit period ends either with the completion of the thirteenth consecutive week beginning with the third week following a state "on" indicator, or later, with the completion of the third week following the first week for which there is a state "off" indicator. However, another extended benefit period shall not begin until the fourteenth week following the end of a previous extended benefit period.

d. *Rate of insured unemployment.* For the purposes of this subrule, the rate of insured unemployment means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits (excluding state plant closing benefits and benefits paid to federal

civilian employees and ex-servicemembers under 5 U.S.C., chapter 85) in this state for weeks of unemployment with respect to the most recently completed 13-consecutive-week period by the average monthly insured employment for the first four of the six most recently completed calendar quarters immediately preceding the end of the 13-week period.

24.46(3) *Announcement and notice of the beginning and ending of an extended benefit period.*

a. Announcement by director. The beginning or ending date, whichever is appropriate, of an extended benefit period is announced by the director of the department of workforce development through appropriate news media in this state. As the case may be, the announcement clearly describes the unemployed individuals who may become eligible or ineligible for extended benefits.

b. Notice to individuals. The Form 65-5309, Notice to Individuals, is used by the department to notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year which will not end prior to the beginning of the extended benefit. The notice describes those actions required of the individual to claim the extended benefits.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits of the ending of an extended benefit period. The notice describes the effect on the individual's right to extended benefits.

24.46(4) *Amount and duration of extended benefits.*

a. Weekly extended benefit amount. An individual's weekly extended benefit amount paid for a week of total unemployment during the individual's eligibility period is equal to the individual's weekly regular benefit amount paid for a week of total unemployment during the individual's applicable benefit year.

b. Duration of extended benefits. The total amount of extended benefits which an individual may receive during the individual's applicable benefit year is limited to 50 percent of the total amount of regular benefits, excluding any state plant closing benefits, received by the individual during that benefit year or 13 times the individual's weekly regular benefit amount paid for a week of total unemployment during that benefit year whichever is less; however, an individual is limited to two weeks of extended benefits if the individual files an interstate claim for extended benefits in a state in which an extended benefit period is not in effect.

c. Eligibility period. The eligibility period is the period of weeks in and after an individual's benefit year which begin in an extended benefit period when an individual is eligible to receive extended benefits; however, if a benefit year ends within an individual's eligibility period for extended benefits, the remaining extended benefits which the individual is entitled to receive in that portion of the eligibility period which extends beyond the end of the individual's benefit year, is reduced, but not below zero, by an amount arrived at by multiplying the number of weeks of Federal Trade Readjustment Act benefits received by the individual during the benefit year times the individual's weekly extended benefit amount.

d. Applicable benefit year. The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

24.46(5) *Eligibility requirements for extended benefits.* Except where the results are inconsistent with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615, the provisions of this state's law which apply to claims for, and the payment of, regular benefits apply to claims for, and the payment of, extended benefits. An individual is eligible to receive extended benefits for a week of unemployment during the individual's eligibility period if the department finds that all of the following conditions are met:

a. The individual is an exhaustee. An exhaustee is an individual who has exhausted all entitlements to regular benefits under this or any other state law as well as federal civilian employee, railroad unemployment insurance, and ex-servicemember benefits.

An individual is also an exhaustee:

(1) If the individual may be entitled to additional regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year.

(2) If the individual's benefit year has expired prior to the week, and the individual has no, or insufficient, wages on the basis of which to establish a new benefit year.

(3) If the individual has no right to benefits under other laws of the federal government, as specified in the regulations issued by the United States Secretary of Labor, or a contiguous country with which the United States has an agreement, but if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to the benefits, then the individual is an exhaustee.

b. The individual has one and one-half times the high quarter wages. An individual is required to have been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

c. The individual is required to actively seek, apply for or accept, suitable work. When an individual files an initial claim for extended benefits, the Form 60-0274, Notice for Individuals Claiming Extended Benefits, is used to determine the individual's prospects for obtaining work and to notify the individual that, beginning with the week following the week in which the individual is furnished this notice:

(1) If the individual's prospects for obtaining work within a reasonably short period are "good," the individual is required to actively seek, apply for or accept, suitable work in which, all other considerations being reasonably equal, the gross average weekly wage equals or exceeds 65 percent of the individual's average weekly wage from the highest earnings quarter of the individual's base period.

(2) If the individual's prospects for obtaining work within a reasonably short period are "not good," the individual is required to actively seek, apply for or accept, suitable work which is within the individual's capabilities to perform and which offers a gross average weekly wage which exceeds the individual's weekly extended benefit amount for a week of total unemployment plus any supplemental unemployment benefits; however, the individual is not required to actively seek, apply for or accept, work which offers a gross average weekly wage less than the federal or state minimum wage whichever is higher.

(3) For the purposes of this paragraph, reasonably short period means four weeks. If an individual whose prospects for obtaining work are "good" has not secured work within four weeks following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, then the individual is notified on Form 65-5309, Notice to Individuals, that the individual's prospects for obtaining work are now considered as "not good."

(4) For the purposes of this paragraph, actively seeking work means that, for each week following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, the individual is required to provide tangible evidence on the weekly claim for benefits that the individual is making a systematic and sustained effort to search for suitable work.

(5) If prospects are determined to be "not good," an individual shall not be disqualified for failing to apply for or accept work which is not offered in writing or is not listed with this state's employment service.

d. The individual is required to requalify following a disqualification for failure to actively seek, apply for or accept, suitable work. To become eligible for extended benefits following a disqualification for failure to actively seek, apply for or accept, suitable work, the individual is required to be employed in insured work for four weeks, which need not be consecutive, and earn four times the individual's weekly extended benefit amount.

871—24.47(96) Disaster benefits. Benefits under the Disaster Relief Act of 1974. Unemployment benefits payable under Public Law 93-288, the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 625 and 650, and Chapter 32, Part 1710.16. These benefits

are payable to claimants who are unemployed due to natural disasters. A claimant who is eligible for regular unemployment benefits shall not be eligible for disaster unemployment assistance.

871—24.48(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees shall be determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650. These benefits are payable under the Federal Employer's Compensation Act, 5 U.S.C. 8101-8150, 8191-8193, and are based on wages earned by civilians in covered federal employment.

871—24.49(96) UCX claims. Benefits under the Ex-servicemember's Unemployment Compensation Act.

24.49(1) *Applicable law.* Unemployment benefits for ex-military personnel shall, in addition to being determined in accordance with applicable Iowa law and rules, be determined in substantial compliance with the rules and guidelines of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 614 and 650.

24.49(2) *When payable.* These benefits are payable under the Ex-servicemember's Unemployment Compensation Act of 1958, 5 U.S.C. 8850. They allow unemployment compensation to be based on wages earned while on active military duty.

871—24.50(96) Temporary extended unemployment compensation.

24.50(1) to **24.50(5)** Rescinded IAB 8/6/03, effective 9/10/03.

24.50(6) Overpayments will be offset up to and including 100 percent of the federal temporary extended unemployment compensation benefit payment.

24.50(7) Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—24.51(96) School definitions.

24.51(1) Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

24.51(2) Educational service agency means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

24.51(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution which consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor which is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution which consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations which have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies. Neither providing a title nor withholding it should be controlling in itself.

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

24.51(4) Holiday recess. See vacation period subrule 24.51(8).

24.51(5) Institution of higher education means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

24.51(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing

academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

24.51(7) School duration period.

a. Academic year is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

b. Term is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term shall mean the same as a quarter period. If the educational institution operates on a trimester basis, then term shall mean the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

c. Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.

24.51(8) Vacation period or holiday recess. In Iowa Code section 96.4(5), the term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

24.51(9) Between terms or academic years denial means any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such terms or academic years.

871—24.52(96) Determining eligibility of school claims after employer protest.

24.52(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department shall send a Form 65-5317, Notice of Claim, to the educational institution and such educational institution wishing to protest such a claim shall return such notice to the department and shall include on it a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to Form 65-5317, Notice of Claim.

24.52(2) If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding should result in a disqualification, the effective starting date of the disqualification shall be determined as follows:

a. No earlier than the effective starting date of the claim as it would serve no useful purpose. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue shall still be adjudicated since the issue is determined as a voluntary quit rather than a job refusal pursuant to subrules 24.25(37) and 24.26(19).

b. The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

c. The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification shall be the Sunday of the week in which the job offer was made.

d. The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment shall be adjudicated under the voluntary quit section of the law pursuant to subrules 24.25(37), 24.26(19) and 24.52(11).

24.52(3) Professional employee. Unemployment insurance payments which are based on school employment shall not be paid to a professional employee for any week of unemployment which begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or both such terms. However, unemployment insurance payments can be made which are based on non-school-related wage credits pursuant to subrule 24.52(6).

24.52(4) Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph *"e."*

24.52(5) Twelve-month, year-round employee. An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term shall be adjudicated under Iowa Code section 96.5(3), regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

24.52(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

24.52(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

24.52(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a "when earned" basis rather than on a "when paid" basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)*"b"* and paragraph 24.13(2)*"o."*

24.52(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to

any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

24.52(10) Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2)*"i"*(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)*"i"*(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2)*"i"*(3) if they are:

(1) Able and available for work.

(2) Making an earnest and active search for work each week.

(3) Placing no restrictions on their employability.

(4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

24.52(11) Declination of new contract or reasonable assurance.

a. The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year shall have the separation adjudicated under the voluntary quit provision of Iowa Code section 96.5(1) pursuant to subrule 24.25(37).

b. This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.26(19) and 24.26(22).

24.52(12) Delayed offer and acceptance of a contract or reasonable assurance of employment in the succeeding term or year. School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year shall be disqualified under the "between terms denial" provision.

24.52(13) Continuing supplemental (part-time) school employment after loss of nonschool employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account, whether contributory or reimbursable, pursuant to Iowa Code section 96.7(3)*"a"*(2).

871—24.53(96) Noncovered school-related employment.

24.53(1) Pursuant to rule 871—23.20(96), wages earned by a student who performs services in the employ of a school at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) cannot be used as wage credits for claim or benefit purposes. However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

24.53(2) Pursuant to rule 871—23.20(96), wages earned by the spouse of such a student in employment with the educational institution attended by the student cannot be used for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

24.53(3) Pursuant to rule 871—23.21(96), wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be considered as insured employment.

871—24.54(96) Church school coverage. Schools affiliated with a church are exempt from coverage but may volunteer coverage by request to the department of workforce development. Schools not affiliated with a church are covered employers with covered employment. Church school coverage is defined pursuant to rule 871—23.27(96).

871—24.55 and **24.56** Reserved.

871—24.57(96) Athletes—disqualifications. "Athletes" as used in Iowa Code section 96.5(9), is intended to apply to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes and are not within the scope of Iowa Code section 96.5(9).

24.57(1) As used in Iowa Code section 96.5(9), "any services, substantially all of which consist of participating in sports or athletic events" means all services performed by an individual in any subject employment during the individual's base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

24.57(2) As used in Iowa Code section 96.5(9), "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

a. A regular player or team member.

b. An alternate player or team member.

c. An individual in training to become a regular player or team member.

d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.57(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the department after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.57(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

a. The individual has an express or implied multiyear contract which extends into the subsequent sport season, or,

b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.57(5) Benefits which will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.57(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.57(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.57(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

871—24.58(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return them to the employer who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.58(1) A shared work plan will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks.

24.58(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.58(3) A plan which has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.58(4) Approval of a plan may be denied or revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

24.58(5) The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal

will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

24.58(6) If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

This rule is intended to implement 2009 Iowa Code Supplement section 96.40 as amended by 2010 Iowa Acts, Senate File 2279.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—24.59(96) Child support intercept. An individual who owes a child support obligation and who has been determined to be eligible for unemployment insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. The department of workforce development shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.59(1) *Information furnished to child support recovery unit.* The department of workforce development shall furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

24.59(2) *Action taken by child support recovery unit.* The child support recovery unit shall contact the claimant so that an opportunity is afforded to the claimant for a signed agreement to have a specified amount deducted and withheld from the claimant's benefits. The child support recovery unit shall submit a copy of the signed agreement to the department of workforce development and the department shall deduct and withhold the amount specified in the agreement.

24.59(3) *Garnishments.* Failure of the child support recovery unit to reach an agreement with the claimant for a specified amount to be deducted may result in the child support recovery unit initiating a garnishment action through legal process under Iowa Code chapter 642. The department of workforce development shall deduct and withhold from the claimant's benefits the amount specified. Notwithstanding section 96.15, benefits under chapter 96 are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit as established in Iowa Code section 252B.2, to satisfy the child support obligation of an individual who is eligible under this chapter. Child support obligation is defined as only those obligations which are enforced pursuant to the plan as described in Section 454 of the Social Security Act under Part D of Title IV entitled "State Plan for Child Support."

24.59(4) *Treatment of amount deducted for child support.* Any amount deducted from unemployment insurance payments for child support obligations shall be treated as if it were paid to the individual as benefits under Iowa Code chapter 96.

24.59(5) *Processing of payments.* The child support recovery unit shall furnish to the department the name and address of the designated public official to whom the amount deducted must be remitted. After the deduction, the remaining balance shall be credited to the claimant.

24.59(6) *Notice to claimant.* The department shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant's weekly benefit amount which satisfies the individual's child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit payment. The notice shall explain the authority for the deduction and include the claimant's right of appeal.

24.59(7) *Appeal rights on the child support deduction.*

a. Any appeal on a child support deduction is limited to either the validity of workforce development's authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. The department does not have the authority under Iowa Code chapter 96 to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

871—24.60(96) Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

24.60(1) Section 3304(a)(14) of the Federal Unemployment Tax Act requires that the state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident. This provision does not deny benefits on the basis of services performed by noncitizens. It applies to services performed by individuals who do not have legal status of permanent residence in this country.

24.60(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the Immigration and Naturalization Service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—24.56(96), administrative penalties, and rule 871—25.10(96), prosecution on overpayments.

d. Rescinded IAB 8/6/03, effective 9/10/03.

24.60(3) Disqualification of aliens.

a. Aliens shall be disqualified for services performed unless such alien is an individual who:

(1) Was lawfully admitted for permanent residence at the time such services were performed or;

(2) Was lawfully present in this country for purpose of performing such service or;

(3) Was permanently residing in this country under color of law at the time such services were performed.

b. Color of law permanent residence is defined as:

(1) An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

(2) An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

(3) An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

(4) Reserved.

(5) An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

(6) An alien who has been formally granted deferred action or nonpriority status by the immigration and naturalization service.

24.60(4) Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 which indicates eligibility to perform service in this country.

a. Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker		Symbol on I-94	Employment Permitted
(1)	Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2)	Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3)	Treaty trader, spouse and children Treaty investor, spouse and children	E-1 E-2	Admitted to work for a specific employer or as a sole proprietorship or partnership.
(4)	Student	F-1 M-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
(5)	Representatives of foreign governments to international organization such as the U.N.	G-1 G-2 G-3 G-4 G-5	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(6)	Temporary worker of distinguished merit and ability	H-1	Are admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7)	Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8)	Trainee	H-3	Same as for H-1.
(9)	Exchange visitor Spouse and children	J-1 J-2	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
(10)	Fiancé or fiancee of USC entering solely to conclude valid marriage Child of a K-1	K-1 K-2	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
(11)	Intra company transferee entering to continue employment with same employer. Dependents.	L-1 L-2	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by the Immigration Service. I-94 will be stamped: "Employment Authorized."
(12)	NATO representatives	NATO-1 NATO-2 NATO-3 NATO-4 NATO-5 NATO-6 NATO-7	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."

b. Immigrant aliens who are not allowed to perform services are:

Class of worker		Symbol on I-94	Employment Status
(1)	Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2)	Temporary visitor for business	B-1	May not accept employment.
(3)	Temporary visitor for pleasure	B-2	May not accept employment.
(4)	Alien in transit	C-1 C-2 C-3	May not accept employment.
(5)	Transit without a visa	TRWOV	May not accept employment.
(6)	Seaman	D-1 D-2	May not accept employment.
(7)	Dependent of student	F-2 M-2	May not accept employment.
(8)	Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9)	Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

[Filed 12/29/55; amended 12/29/58, 6/23/59, 12/4/59, 11/22/61, 4/21/72]
[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]
[Filed 4/29/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 12/9/76, Notice 11/3/76—published 12/29/76, effective 2/2/77]
[Filed 9/30/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]
[Filed 5/24/78, Notice 4/5/78—published 6/14/78, effective 7/19/78]
[Filed 8/17/78, Notice 6/28/78—published 9/6/78, effective 10/11/78]
[Filed 12/22/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]
[Filed emergency 6/22/79—published 7/11/79, effective 7/1/79]
[Filed 10/12/79, Notice 6/27/79—published 10/31/79, effective 12/5/79]
[Filed emergency 11/29/79—published 12/26/79, effective 11/29/79]
[Filed 2/12/80, Notice 10/31/79—published 3/5/80, effective 4/9/80]
[Filed 7/31/80, Notice 4/30/80—published 8/20/80, effective 9/24/80]
[Filed 12/4/80, Notice 10/1/80—published 12/24/80, effective 1/28/81]
[Filed 4/10/81, Notice 2/18/81—published 4/29/81, effective 6/4/81]
[Filed emergency 6/15/81—published 7/8/81, effective 7/1/81]
[Filed 11/6/81, Notice 7/8/81—published 11/25/81, effective 12/30/81]
[Filed 4/23/82, Notice 11/25/81—published 5/12/82, effective 6/17/82]
[Filed 8/26/82, Notice 7/21/82—published 9/15/82, effective 10/20/82]
[Filed emergency 9/10/82—published 9/29/82, effective 9/10/82][1]
[Filed 10/8/82, Notice 8/18/82—published 10/27/82, effective 12/2/82]
[Filed emergency 10/25/82—published 11/24/82, effective 10/25/82]
[Filed 1/27/83, Notice 10/13/82—published 2/16/83, effective 3/23/83]
[Filed 3/11/83, Notices 11/25/81, 5/26/82—published 3/30/83, effective 5/5/83]
[Filed 3/28/83, Notice 2/16/83—published 4/13/83, effective 5/18/83]
[Filed emergency 3/31/83—published 4/27/83, effective 4/1/83]
[Filed emergency 6/27/83—published 7/20/83, effective 7/1/83]
[Filed emergency 8/3/83—published 8/31/83, effective 8/3/83]
[Filed 2/10/84, Notice 8/31/83—published 2/29/84, effective 4/5/84]
[Filed 5/2/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed 4/27/84, Notice 2/29/84—published 5/23/84, effective 6/28/84]

[Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]
[Filed 8/24/84, Notice 6/20/84—published 9/12/84, effective 10/17/84]
[Filed 1/11/85, Notice 8/29/84—published 1/30/85, effective 3/6/85]
[Filed 1/14/85, Notice 10/24/84—published 1/30/85, effective 3/6/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed 9/20/85, Notice 8/14/85—published 10/9/85, effective 11/13/85]
[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]
[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]
[Filed emergency 10/31/86—published 11/19/86, effective 10/31/86]
[Filed 11/7/86, Notice 8/13/86—published 12/3/86, effective 1/7/87]
[Filed 12/8/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]
[Filed 1/13/87, Notice 11/19/86—published 1/28/87, effective 3/4/87]
[Filed emergency 6/12/87—published 7/1/87, effective 7/1/87]
[Filed 6/12/87, Notice 4/8/87—published 7/1/87, effective 8/5/87]
[Filed 6/12/87, Notice 5/6/87—published 7/1/87, effective 8/5/87]
[Filed 7/24/87, Notice 6/3/87—published 8/12/87, effective 9/16/87]
[Filed 9/4/87, Notice 7/1/87—published 9/23/87, effective 10/28/87]
[Filed emergency 10/30/87—published 11/18/87, effective 12/1/87]
[Filed 1/8/88, Notice 11/18/87—published 1/27/88, effective 3/2/88]
[Filed 2/19/88, Notice 12/30/87—published 3/9/88, effective 4/13/88]
[Filed 4/1/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed 8/5/88, Notice 6/29/88—published 8/24/88, effective 9/28/88]
[Filed 11/14/88, Notices 8/24/88, 10/19/88—published 11/30/88, effective 1/4/89]
[Filed 11/23/88, Notice 10/19/88—published 12/14/88, effective 1/18/89]
[Filed 2/3/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 6/23/89, Notice 5/17/89—published 7/12/89, effective 8/16/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
[Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 12/21/90, Notice 11/14/90—published 1/9/91, effective 2/13/91]
[Filed 7/30/91, Notice 6/12/91—published 8/21/91, effective 9/25/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]
[Filed emergency 4/23/93—published 5/12/93, effective 6/1/93]
[Filed 6/17/93, Notice 5/12/93—published 7/7/93, effective 8/11/93]
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
[Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
[Filed 6/16/95, Notice 5/10/95—published 7/5/95, effective 8/9/95]
[Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
[Filed 8/22/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Transferred from 345—Ch 4 to 871—Ch 24 IAC Supplement 3/12/97]
[Filed 1/20/99, Notice 12/16/98—published 2/10/99, effective 3/17/99][2]
[Filed 7/9/99, Notice 6/2/99—published 7/28/99, effective 9/1/99]
[Filed 10/24/01, Notice 9/19/01—published 11/14/01, effective 12/19/01]
[Filed emergency 4/12/02—published 5/1/02, effective 4/12/02]
[Filed 7/18/03, Notice 6/11/03—published 8/6/03, effective 9/10/03]
[Filed 9/4/08, Notice 7/30/08—published 9/24/08, effective 10/29/08]
[Filed ARC 8711B (Notice ARC 8583B, IAB 3/10/10), IAB 5/5/10, effective 6/9/10]

[Filed ARC 1367C (Notice ARC 1286C, IAB 1/8/14), IAB 3/5/14, effective 4/9/14]
[Filed ARC 3116C (Notice ARC 3028C, IAB 4/12/17), IAB 6/7/17, effective 7/12/17]
[Filed ARC 3247C (Notice ARC 3070C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3248C (Notice ARC 3114C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3265C (Notice ARC 3138C, IAB 6/21/17), IAB 8/16/17, effective 9/20/17]
[Filed ARC 3303C (Notice ARC 3178C, IAB 7/5/17), IAB 8/30/17, effective 10/4/17]
[Filed ARC 3401C (Notice ARC 3250C, IAB 8/16/17), IAB 10/11/17, effective 11/15/17]
[Filed ARC 3562C (Notice ARC 3280C, IAB 8/30/17; Amended Notice ARC 3380C, IAB 10/11/17; Amended Notice ARC 3432C, IAB 10/25/17), IAB 1/3/18, effective 2/7/18]
[Filed ARC 3647C (Notice ARC 3522C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]
[Filed ARC 3648C (Notice ARC 3521C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

[1] See rule 345—4.50(96)

[2] Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

CHAPTER 25
BENEFIT PAYMENT CONTROL

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 5]

871—25.1(96) Definitions.

"Administrative penalty" means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

"Allegation of fraud" means any form of communication from a party which implies fraudulent activity.

"Anonymous tip" means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

"Appeals" means a request for a review by an appeals authority of the department from any determination made by a representative of the department, and including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

"Benefits" means money payments to an individual with respect to unemployment. See 871—subrule 24.1(18).

"Claim" means a request for benefit payment. See 871—subrule 24.1(25).

"Claimant." See 871—subrule 24.1(26).

"Earnings" means the remuneration for services performed.

"Employing unit" means any individual or entity which engages the services of one or more individuals; one for whom employees work and who pays their wages or remuneration.

"Evidence" means any witnesses' testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

"Fact-finding interview" means a discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

"Fraudulent activity" means actions based on or in the spirit of fraud.

"Initial determination" means the first determination with respect to a claim or a request for determination of insured status.

"Intent" means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

"Investigator" means investigation and recovery section investigator.

"Local office" means the workforce development center office in which claims functions are performed.

"Material fact" means a fact which necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

"Misconduct." See 871—subrule 24.32(1), paragraph *"a,"* and 871—subrule 24.32(3).

"Misrepresentation" means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

"Month" means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

"Overpayment" means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

"Social security account number." See 871—subrule 24.1(115).

"Surveillance" means the observance of activities.

"Wage cross match audit" means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

"Wages" means the same as earnings. See rules 871—24.13(96) and 871—24.16(96).

a. When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

b. Cash value of room and board.

(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96), the reasonable cash value of same shall be deemed wages.

(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in subparagraphs (4) and (5) of this paragraph.

(3) In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	$300.00
Meals (without lodging) per week	100.00
Meals (without lodging) per day	20.20
Lodging (without meals) per week	198.00
Lodging (without meals) per day	40.00
Individual meals:	
Breakfast	4.50
Lunch	5.30
Dinner	10.50
A meal not identifiable as either breakfast, lunch, or dinner	4.50

(4) The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with subparagraph (3) of this paragraph, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

"Week." See 871—subrule 24.1(135).

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(38), 96.19(12), and 96.19(20).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—25.2(96) Policy of the investigation and recovery section.

25.2(1) The policy of the investigation and recovery section is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

25.2(2) It shall be the policy of the investigation and recovery section to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the section to seek prosecution of persons whom the section believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.3(96) Functions of the investigation and recovery section. The function of the investigation and recovery section is to:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery bureau which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The bureau shall examine allegations of the following type:

a. Failure to report earnings while receiving unemployment insurance benefits.

b. Collusion between claimant and employer or between two or more claimants, in the fraudulent obtaining of benefits.

c. The use of multiple identities and social security numbers to obtain unemployment insurance benefits.

d. Forgery and fraudulent certification for unemployment insurance benefits by one person impersonating another.

e. Corporations, partnerships, individual proprietorships, and other employing units which fraudulently evade unemployment insurance coverage and tax assessment. Determine status of claimants employed by these entities.

f. Claims involving contrived or fictitious employment, (i.e., family relationships).

g. Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.

h. Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.

i. Validity of alien registration numbers through a cross-check with U.S. Citizenship and Immigration Services. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. Refer to rule 871—24.60(96) for the definition of alien.

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

a. Submit cases to the county attorneys.

b. Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—25.4(96) Allegation of claimant fraud. The procedure to be followed where an allegation of claimant fraud has been made is:

25.4(1) Upon receipt of an allegation of claimant fraud, if the alleging party supplies sufficient information to proceed with an investigation, the alleging party shall be advised that the investigation and recovery bureau will make a full investigation of the allegation. The alleging party will be advised

of the bureau's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(2) The allegations will be promptly forwarded to the investigation and recovery section for investigation.

25.4(3) If the findings revealed through the investigation by the investigation and recovery bureau indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery bureau will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(4) If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery bureau.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the investigation and recovery bureau in an employing unit fraud investigation:

25.5(1) Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

25.5(2) The allegation will be promptly forwarded to the investigation and recovery bureau for investigation.

25.5(3) The investigations and recovery unit may seek the assistance and expertise of the tax bureau staff.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery bureau, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or issue concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event a workforce development office receives an allegation, the office will forward such information to the investigation and recovery bureau, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, an investigation file will be prepared containing all necessary documents. A case number will be assigned and the case assigned to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from claimants,

employing units, witnesses, law enforcement agencies, local, state, and federal agencies, and any other source as may be necessary.

25.6(3) The investigation shall include the gathering of pertinent evidence and statements regarding any suspected fraudulent activity.

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony to or to produce records within a reasonable time for the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery bureau may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery bureau, in order to secure the production of such records.

25.6(5) The investigation and recovery bureau may seek the assistance and expertise of the field auditors.

25.6(6) Surveillance of an individual or location may be conducted by the investigator when that individual or location is pertinent to the investigation.

25.6(7) Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery bureau's findings, if such investigation could affect the employer account of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

25.6(8) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) Determination by reason of the claimant's own fault, employer's fault, agency fault, or fraud as provided in Iowa Code section 96.16, that the claimant has received benefits to which such claimant was not entitled shall be made by the investigations and recovery unit on the basis of such facts as it may obtain.

25.7(2) A notice of such determination shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(3) Upon receiving a written request for review, the investigation and recovery bureau, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(4) The claimant may directly appeal the decision of the investigation and recovery bureau without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

25.7(5) Claimants affected by determinations made in accordance with this rule shall have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When such determination has become final the benefits shall be recovered.

a. The department shall always demand immediate repayment of the overpayment as its first option for those claimants not in benefit claiming status at the time of the initial overpayment determination. If not paid immediately, the overpayment amount will be deducted from future benefits. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the second billing. The first repayment is expected 10 days from the date of the second repayment statement and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable by the department.

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under $199	$ 25	1 to 8
$200 to $399	$ 40	5 to 10
$400 to $599	$ 50	8 to 12
$600 to $799	$ 65	9 to 13
$800 to $999	$ 80	10 to 13
$1000 to $1499	$ 90	11 to 17
$1500 to $1999	$100	15 to 20
$2000 to $2999	$110	18 to 28
$3000 and over	$130	23 to —

d. If a claimant fails to respond to the second repayment statement a third notice shall be sent in approximately 30 days. The department has the option to send a notice which allows the claimant another 10 days to make full repayment of the indebtedness or a partial payment with an acceptable signed repayment agreement to prevent further collection action by the department, or the department may send a lien warning letter as the third billing notice. This warning gives 10 days to make full payment which will prevent lien filing. The department may proceed with any appropriate civil action to collect the debt which would include, but not be limited to, a judgment in a court having jurisdiction over the matter. The same type of action may be pursued by the department in those cases where a claimant defaults on a repayment schedule.

e. If the department receives a cash repayment to liquidate all or part of an indebtedness the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name or other means of identification, the money shall be retained until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. Reserved.

h. An underpayment of $5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), 96.16, and 96.19(38).

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3248C**, IAB 8/2/17, effective 9/6/17]

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) *Good faith overpayment.* If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual is not entitled to receive the benefits, the department shall recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. The department shall mail the overpayment decision to the claimant's last-known address. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment in the form of a negotiable check, money order, or bank draft payable to the Department of Workforce Development.

b. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement.

c. Rescinded IAB 10/15/03, effective 11/19/03.

d. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under any of the following programs:

(1) Unemployment Compensation Federal Employees (UCFE)

(2) Unemployment Compensation Ex-servicemembers (UCX)

(3) Trade Readjustment Allowances (TRA)

(4) Disaster Unemployment Assistance (DUA)

and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered shall be credited to the appropriate account of the United States. Three years after the instance of the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of Trade Readjustment Allowances or Trade Adjustment Assistance or Disaster Unemployment Assistance will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. Whenever it is found that a claimant has received benefits through misrepresentation and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of the overpayment has been reimbursed or otherwise liquidated to the satisfaction of the department.

b. The claimant may make refund of an overpayment by cash or by means of an offset against future benefit payments, at the discretion of the department.

(1) If the department seeks to recover the amount of the benefits, the department may file a lien with the county recorder for the amount of the overpayment against the property and rights to property, whether real or personal, belonging to the individual.

(2) The department may attempt to collect the overpayment in the manner provided in Iowa Code section 96.14(3).

c. Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment. The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.

d. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under any of the following programs:

(1) Unemployment Compensation Federal Employees (UCFE)

(2) Unemployment Compensation Ex-service members (UCX) and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

25.8(3) *Purging uncollectible overpayments.* On the last working day of each calendar month, the department reviews all outstanding overpayments which are ten years or older from the date of the overpayment decision and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older.

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

[**ARC 3247C**, IAB 8/2/17, effective 9/6/17; **ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—25.9(96) Administrative penalties.

25.9(1) When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employing unit or employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements, with intent to obtain benefits, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year.

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by the filing of a notice of appeal at any office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.

b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.

e. Review of claims using social security numbers not issued by the social security administration.

f. Cross-checking of information from the Iowa centralized employer registry.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Unemployment Insurance Fact-Finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) If the claimant wishes to invoke the right to remain silent, the investigator can require the claimant to answer all pertinent questions. However, the claimant cannot be prosecuted on the basis of any transaction, matter, or event concerning which the claimant is compelled to testify or produce evidence after the individual has claimed the privilege against self-incrimination.

25.9(6) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel at such hearing.

25.9(7) Rescinded IAB 10/15/03, effective 11/19/03.

25.9(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations involving a denial of benefits.

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery bureau from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery bureau.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).

871—25.10(96) Prosecution on overpayments.

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery bureau, to determine if a prosecution for fraud would meet the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery bureau will issue a decision concerning the overpayment.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery bureau from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed upon receipt by the investigator.

25.11(2) A handwriting sample will be taken from claimant when necessary and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing and participate in the mediation process.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage cross match audit procedure.

25.12(1) Each quarter, cross match audit Forms 65-5321 are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The form, upon completion by the employer, is sent to the investigation and recovery bureau for entering in the Iowa workforce development database system. If the form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. Any potential cases of conflict generated by the computer program will result in an investigation assignment and investigation packet. Claimants will be notified by means of Form 65-5332 (Preliminary Audit Notice) and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323.

25.12(3) An employer may choose to participate in the automated crossmatch procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of $25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

[**ARC 3248C**, IAB 8/2/17, effective 9/6/17]

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the department receives notification from the state comptroller's office.

25.13(2) *Canceled warrant.* On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact the department for assistance. The individual will be instructed to return the outdated warrant to the unemployment insurance service center with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at its regular monthly meeting, as to payment or nonpayment of the warrant.

25.13(3) *Lost and uncashed warrant.*

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the department representative for assistance. All information will be forwarded to the unemployment insurance service center.

b. The department will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) of this rule shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant, and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the individual for completion. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall be transmitted in duplicate to the unemployment insurance service center.

d. The department will then request that the state comptroller reissue a duplicate warrant, and this warrant will be mailed to the claimant by the department.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and possible prosecution considered, if warranted.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the unemployment insurance service center.

25.13(4) *Forged warrants.*

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The Form 68-0320, affidavit as to forged endorsement, shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized.

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the unemployment insurance service center.

(3) A copy of the original warrant, the notarized affidavit and the copy of the police report will be sent to the unemployment insurance service center for action. The department will explain to the claimant that the documents will be reviewed and that a handwriting analysis may be completed.

c. The investigation and recovery bureau will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

25.13(5) *Employer account credit.* At the time of cancellation of any outstanding benefit warrant(s), the employer account shall be credited with the amount of the warrant(s) so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.14(96) Payments of benefits due deceased person.

25.14(1) Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits which were due shall be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits shall, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds shall have assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessaries of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The comptroller shall cause any unredeemed warrant or warrants payable to a deceased person to be surrendered and voided and shall issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants shall fully discharge the department of its obligation in respect to the claims covered thereby and no other person shall claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) When an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period from the individual's employer, the department shall recover the benefits in the following manner:

a. The department shall first attempt to reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer and to remit that amount to the unemployment compensation fund.

b. If the department fails to reach an agreement with the individual and the employer as provided in paragraph *"a,"* then the department shall either deduct an amount equal to the benefits received by the individual from any future benefits received by the individual or have the individual pay the department an amount equal to the benefits received by the individual.

c. The burden of proof shall rest with the employer to establish the dollar amount of the back pay award which is remuneration for lost wages and the specific period of time to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer, then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the unemployment compensation fund; however, if the department fails to reach an agreement, then the benefit charges shall not be relieved until the benefits paid to the individual are recovered either by deducting that amount from any future benefits received by the individual or by having the individual pay that amount to the department.

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least $50 and owes an overpayment of benefits of at least $50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) The individual's name and social security number are given to the department of revenue.

25.16(2) The department of revenue notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

25.16(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

25.16(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

25.16(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code sections 96.11 and 421.17(26,29).

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—25.17(96) Federal payment offset. Pursuant to 42 U.S.C. 503 §303(m) and 26 U.S.C. §6402(f), the department shall utilize the treasury offset program in order to collect covered unemployment compensation.

[**ARC 3647C**, IAB 2/14/18, effective 3/21/18]

[Filed 8/1/80, Notice 4/30/80—published 8/20/80, effective 9/24/80]
[Filed 4/10/81, Notice 2/18/81—published 4/29/81, effective 6/4/81]
[Filed 4/27/84, Notice 2/29/84—published 5/23/84, effective 6/28/84]
[Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]

[Filed 12/16/86, Notice 9/24/86—published 1/14/87, effective 2/18/87]
[Filed emergency 6/12/87—published 7/1/87, effective 7/1/87]
[Filed 7/24/87, Notice 6/3/87—published 8/12/87, effective 9/16/87]
[Filed 9/4/87, Notice 7/1/87—published 9/23/87, effective 10/28/87]
[Filed 2/19/88, Notice 12/30/87—published 3/9/88, effective 4/13/88]
[Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed 11/14/88, Notices 8/24/88, 10/19/88—published 11/30/88, effective 1/4/89]
[Filed 11/23/88, Notice 10/19/88—published 12/14/88, effective 1/18/89]
[Filed 2/3/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
[Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]
[Filed 7/30/91, Notice 6/12/91—published 8/21/91, effective 9/25/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 12/20/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 6/17/93, Notice 5/12/93—published 7/7/93, effective 8/11/93]
[Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
[Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
[Transferred from 345—Ch 5 to 871—Ch 25 IAC Supplement 3/12/97]
[Filed 1/20/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]
[Filed ARC 3247C (Notice ARC 3070C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3248C (Notice ARC 3114C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3303C (Notice ARC 3178C, IAB 7/5/17), IAB 8/30/17, effective 10/4/17]
[Filed ARC 3402C (Notice ARC 3254C, IAB 8/16/17), IAB 10/11/17, effective 11/15/17]
[Filed ARC 3647C (Notice ARC 3522C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

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[Prior to 11/19/97, see Labor Services Division[347]]

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CHAPTER 81
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES BY THE BOILER AND PRESSURE VESSEL BOARD

875—81.1(17A,89) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

875—81.2(17A,89) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—81.3(17A,89) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

81.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

81.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

81.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

81.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—81.4(17A,89) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

81.4(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

81.4(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

81.4(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—81.5(17A,89) Content of petition. The required form for a petition for waiver or variance is available on the board's website at iowaboilers.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

81.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

81.5(2) A description of and citation to the specific rule from which a waiver is requested.

81.5(3) The specific waiver requested, including the precise scope and duration.

81.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 875—81.3(17A,89). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

81.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the boiler or pressure vessel affected by the proposed waiver.

81.5(6) Information regarding the board's action in similar cases.

81.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

81.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

81.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

81.5(10) Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the petition for waiver.

81.5(11) The state boiler identification number of the relevant object.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—81.6(17A,89) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—81.7(17A,89) Notice. The board shall acknowledge a petition within 10 days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—81.8(17A,89) Board review procedures.

81.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

81.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—81.9(17A,89) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—81.10(17A,89) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

81.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

81.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

81.10(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

81.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

81.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

81.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

81.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

81.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

81.10(9) *Service of order.* Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

81.10(10) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the room where the object is installed.

875—81.11(17A,89) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—81.12(17A,89) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

875—81.13(17A,89) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

81.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

81.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

81.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—81.14(17A,89) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—81.15(17A,89) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the specific object to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—81.16(17A,89) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08][◊]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

◊ Two or more ARCs

CHAPTER 82
BOILER AND PRESSURE VESSEL BOARD PETITIONS FOR RULE MAKING

875—82.1(17A,89) Petitions for rule making. Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's website at iowaboilers.gov. The petition shall be filed at the location specified in rule 875—80.5(89). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

82.1(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 to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

82.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

82.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

82.1(4) A brief summary of any data supporting the action urged in the petition.

82.1(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.

82.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition 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.

82.1(7) The board may deny a petition because it does not provide the required information. The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—82.2(17A,89) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—82.3(17A,89) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—82.4(17A,89) Board review procedures.

82.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

82.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

82.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by

regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

82.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 83
DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

875—83.1(17A,89) Petition for declaratory order. Any person may file at the board office a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

83.1(1) The required form for a petition for declaratory order is available on the board's website at iowaboilers.gov. The petition must be in writing and provide the following information where applicable and known to the petitioner:

a. A clear and concise statement of all relevant facts on which the order is requested.

b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.

c. Clear and concise questions the petitioner wants the board to answer.

d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

83.1(2) 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.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—83.2(17A,89) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—83.6(17A,89) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—83.3(17A,89) Intervention.

83.3(1) A person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

83.3(2) At the board's discretion, a person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention more than 20 days after the filing of a petition for declaratory order but prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order.

83.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

b. The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.4(17A,89) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—83.5(17A,89) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—83.6(17A,89) Service and filing of petitions and other papers.

83.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

83.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

83.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rules 875—84.10(17A,89) and 875—84.11(17A,89).

875—83.7(17A,89) Board review procedures.

83.7(1) Within 30 days after receipt of a petition for a declaratory order, the board shall issue a document that does one of the following:

a. Declares the applicability of the statute, rule or order to the specified circumstances,

b. Sets the matter for specific proceedings,

c. Agrees to issue a declaratory order by a specified time, or

d. Declines to issue a declaratory order and sets forth the reasons for its actions as provided in subrule 83.9(1).

83.7(2) The board may request that the petitioner submit additional information or argument concerning the petition. The board may also solicit comments on the substance of the petition from any person. Also, comments on the substance of the petition may be submitted to the board by any person.

83.7(3) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.8(17A,89) Action on petition. Rescinded IAB 9/22/10, effective 10/27/10.

875—83.9(17A,89) Refusal to issue order.

83.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not provide the required information.

b. Rescinded IAB 9/22/10, effective 10/27/10.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

83.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

83.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.10(17A,89) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

875—83.11(17A,89) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—83.12(17A,89) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 84
CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

875—84.1(17A,89) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code subsection 89.14(6). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and ASME code sections rests upon the petitioning owner or operator.

84.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's website at iowaboilers.gov. A petition for reconsideration shall specify:

a. The party seeking reconsideration, including mailing address and telephone number;

b. The location of the equipment subject to the challenged inspection report;

c. The inspection date;

d. The inspector who issued the challenged inspection report;

e. The specific findings or conclusions to which exception is taken;

f. The relief sought.

84.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the commissioner to consider when evaluating the petition.

84.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

84.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

84.1(5) The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 81.

84.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

a. Affirm the inspection report as issued;

b. Issue an amended inspection report;

c. Rescind the inspection report;

d. Deny the petition as untimely.

84.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—84.2(17A,89) Appeal to the board. The commissioner's ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal is available on the board's website at http://www.iowaworkforce.org/labor/boilerboard.htm. Consideration of an appeal of a ruling on a petition for reconsideration shall be a contested case proceeding subject to the provisions of Iowa

Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal of the ruling on petition for reconsideration and shall defend the ruling in a contested case proceeding.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.3(17A,89) Informal review. If the appellant requests an informal review and the commissioner does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

84.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

84.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

84.3(3) Rules 875—84.4(17A,89) through 875—84.31(17A,89) do not apply during informal review.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.4(17A,89) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—84.5(17A,89) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—84.6(17A,89) Scope of issues. Only those issues raised before the commissioner in the petition for reconsideration will be considered preserved for appeal to the board.

875—84.7(17A,89) File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the commissioner shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the commissioner in ruling on the petition for reconsideration, and the commissioner's ruling on the petition for reconsideration.

875—84.8(17A,89) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

875—84.9(17A,89) Presiding officer.

84.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 84.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

84.9(2) Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies

the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

84.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

84.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

84.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—84.26(17A,89) and 875—84.27(17A,89). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

84.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

875—84.10(17A,89) Service and filing.

84.10(1) *Service—when required.* Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

84.10(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

84.10(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board office. All documents that are required to be served upon a party shall be filed simultaneously with the board.

84.10(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—80.5(89), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

84.10(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. 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 Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date) (Signature)

875—84.11(17A,89) Time requirements.

84.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

84.11(2) For good cause, the presiding officer 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 presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—84.12(17A,89) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—84.13(17A,89) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Any objections shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—84.14(17A,89) Disqualification.

84.14(1) A presiding officer or other person 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; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

84.14(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 board 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(3) and subrule 84.25(7).

84.14(3) In a situation where a presiding officer or other person 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.

84.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 84.14(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.

84.14(5) 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.

84.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—84.26(17A,89) and seek a stay under rule 875—84.30(17A,89).

875—84.15(17A,89) Consolidation and severance.

84.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

84.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—84.16(17A,89) Discovery.

84.16(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

84.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—84.17(17A,89) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

84.17(1) Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a

contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

84.17(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

84.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

84.17(4) The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

84.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

84.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

84.17(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

84.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.18(17A,89) Motions.

84.18(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

84.18(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer.

The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

84.18(3) The presiding officer may schedule oral argument on any motion.

84.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

84.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—84.29(17A,89) and appeal pursuant to subrule 84.27(3).

875—84.19(17A,89) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

875—84.20(17A,89) Prehearing conference.

84.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

84.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

84.20(3) In addition to the requirements of subrule 84.20(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

84.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—84.21(17A,89) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

84.21(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

84.21(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—84.22(17A,89) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—84.23(17A,89) Hearing procedures.

84.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

84.23(2) All objections shall be timely made and stated on the record.

84.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

84.23(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

84.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

84.23(6) Witnesses may be sequestered during the hearing.

84.23(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

84.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

84.23(9) The hearing shall be open to the public, except as otherwise provided by law.

84.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

84.23(11) Default.

a. If no continuance was granted and a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 84.27(3). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge of the fact.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.24(17A,89) Evidence.

84.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

84.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

84.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

84.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should

normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

84.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

84.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—84.25(17A,89) Ex parte communication.

84.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

84.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

84.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

84.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

84.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

84.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under each seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited

communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

84.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

84.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.26(17A,89) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

875—84.27(17A,89) Decisions.

84.27(1) *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

84.27(2) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

84.27(3) *Appeals and review.*

a. *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. *Scheduling.* The board shall issue a schedule for consideration of the appeal.

f. *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

g. *Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—84.28(17A,89) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—84.29(17A,89) Applications for rehearing.

84.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

84.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

84.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

84.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

84.29(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—84.30(17A,89) Stays of board actions.

84.30(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. 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.

84.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

84.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

875—84.31(17A,89) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

84.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

84.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 84.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 85
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE BOILER AND PRESSURE VESSEL BOARD

875—85.1(22,89) Definitions. As used in this chapter:

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, by the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the boiler and pressure vessel board.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

"Record system" in these rules means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.2(22,89) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; the board shall cooperate with members of the public in implementing the provisions of that chapter.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.3(22,89) Requests for access to records.

85.3(1) *Address.* The board's mailing address is Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The board's staff is located at 150 Des Moines Street, Des Moines, Iowa.

85.3(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 state holidays.

85.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

85.3(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 to the record by members of the public 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 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 provisions of rule 875—85.4(22,89) in this chapter and other applicable provisions of law.

85.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

85.3(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 in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

85.3(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 shall be prominently posted in board offices. 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 posted in board offices 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 15 minutes. The custodian shall prominently post in board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

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.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—85.4(22,89) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—85.3(22,89).

85.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

85.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

85.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a

delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

85.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

85.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—85.5(22,89) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

85.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

85.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

85.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

85.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

85.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify

any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

85.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.7(22,89) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of an attorney before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.8(22,89) Disclosures without the consent of the subject.

85.8(1) Open records are routinely disclosed without the consent of the subject.

85.8(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 875—85.9(17A,89) or in the notice for a particular record system.

b. To a recipient who has provided the board 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 board 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.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.9(17A,89) 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. "Routine use" 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 board records:

85.9(1) Disclosure to those officers, employees, and agents of the board 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 a legitimate need to use confidential records.

85.9(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.

85.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

85.9(4) Transfers of information within the board, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

85.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

85.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

85.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

85.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.10(22,89) Consensual disclosure of confidential records.

85.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—85.7(22,89).

85.10(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 board 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.

875—85.11(22,89) Release to subject.

85.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. Other records may be withheld from the subject as authorized by law.

85.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.12(21,22,89) Availability of records.

85.12(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

85.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

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)*"e."*

85.12(3) *Authority to release confidential records.* The board 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 875—85.4(22,89). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 85.4(3).
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.13(22,89) Applicability. This chapter does not:

85.13(1) Require the board to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

85.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

85.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board that are governed by the regulations of another agency.

85.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

85.13(5) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual 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 board.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.14(17A,22,89) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by

personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the board are:

85.14(1) *Personnel records.* These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

85.14(2) *Contested case records.* Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89.14.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.15(17A,22,89) Other groups of records. This rule describes groups of records maintained by the board other than record systems. These records are routinely available to the public. However, the board's files of these records may contain confidential information. These records may contain information about individuals. These records include:

85.15(1) *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

85.15(2) *Board records.* Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

85.15(3) *Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions.* These records are open to the public except for information that is confidential according to rule 875—85.12(21,22,89). This information is stored on paper and electronically.

85.15(4) *Waivers and variances.* Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

85.15(5) *Publications.* News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's Web site.

85.15(6) *Other records.* Other records that are not exempted from disclosure by law may be stored on paper or electronically.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.16(22,89) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—85.17(22,89) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

85.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 85.17(2).

85.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records and information supplied will be subject to open records requests

pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]
[Prior to 8/16/06, see 875—Chs 200, 202]

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered "under pressure" and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.
[**ARC 0416C**, IAB 10/31/12, effective 12/5/12]

875—90.2(89,261,252J,272D) Definitions. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

"Alteration" means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"ASME" means the American Society of Mechanical Engineers.

"Boiler" means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. "Boiler" includes all temporary boilers.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

"CFR" means Code of Federal Regulations.

"Construction or installation code" means the applicable standard for construction or installation in effect at the time of installation.

"Division" means the division of labor services, unless another meaning is clear from the context.

"Electric boilers" means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

"External inspection" means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

"High temperature water boiler" means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

"Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

"Institution of health and custodial care" means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 135O.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or

6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an "institution of health and custodial care."

"Internal inspection" means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

"ISO" means International Standards Organization.

"Labor commissioner" means the labor commissioner or the commissioner's designee.

"Lap seam crack" means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes.

"National Board Inspection Code" means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

"Object" means a boiler or pressure vessel.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

"Process steam generator" means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

"Psig" means pounds per square inch gage.

"Reinstallation" means the process of disconnecting an object, moving it, and reconnecting it at the same location or a new location.

"Relief valve" means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

"Repair" means work necessary to return a boiler or pressure vessel to a safe operating condition.

"Rupture disk device" means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

"Safety appliance" shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

"Safety relief valve" means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

"Safety valve" means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

"Special inspection" means an inspection which is not required by Iowa Code chapter 89.

"Temperature and pressure relief valve" means a valve set to relieve at a designated temperature and pressure.

"Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

"Unfired steam pressure vessel" means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

"U.S. customary units" means feet, pounds, inches and degrees Fahrenheit.

"Water heater supply boiler" means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 9790B**, IAB 10/5/11, effective 11/9/11; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 0739C**, IAB 5/15/13, effective 6/19/13; **ARC 1964C**, IAB 4/15/15, effective 5/20/15]

875—90.3(89) Iowa identification numbers. All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

875—90.4(89) National Board registration. Rescinded IAB 11/18/09, effective 1/1/10.

875—90.5(89) Preinspection owner or user preparation.

90.5(1) *Preparation of objects.* Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

90.5(2) *Confined space and lockout, tagout procedures.*

a. It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b. It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or user's confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.5(3) *Hydrostatic tests.* The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

90.5(4) *Boilers.* A boiler shall be prepared for internal inspection in the following manner:

a. Fluid shall be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

c. All grates of internally fired boilers shall be removed.

d. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

90.5(5) *Pressure vessels.* The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.5(6) *Removal of covering or brickwork to permit inspection.* If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.5(7) *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—90.6(89) Inspections.

90.6(1) *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2015), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) *Schedule.*

a. All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3, unless an exception is set forth in this rule.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

90.6(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection.

90.6(4) *Type of inspection.* The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

a. Visible metal or insulation discoloration due to excessive heat.

b. Visible distortion of any part of the pressure vessel.

c. Visible leakage from any pressure-containing boundary.

d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.

e. A suspected or known history of internal corrosion or erosion.

f. Evidence or knowledge of a vessel having been subjected to external heat from a fire.

g. A welded repair not documented as required.

h. Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

90.6(5) *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.6(6) *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

90.6(7) *Imminent danger.* If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

90.6(8) *Internal inspections on a four-year cycle based on process safety management compliance.* The owner shall demonstrate compliance with the requirements set forth in Iowa Code section 89.3(5)*"a"*(4)(b) by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

90.6(9) *Internal inspection on a four-year cycle for utility objects.* An object that meets the criteria of this subrule shall be inspected internally at least once every four years and externally every year. If at any time the object or the owner no longer meets the criteria of this subrule, internal inspections shall be performed on a two-year cycle.

a. The object is owned and operated by an electric public utility subject to rate regulation under Iowa Code chapter 476.

b. The object and the owner meet all the requirements for a two-year internal inspection interval as set forth in Iowa Code section 89.3, subsection 4.

c. If the object is shut down for a period sufficient to allow safe entry, and more than two years have passed since the last internal inspection, the owner shall notify the labor commissioner of the outage and shall schedule an internal inspection.

d. If the labor commissioner determines that an earlier inspection is necessary, the owner shall prepare the object for inspection pursuant to rule 875—90.5(89).

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1189C**, IAB 11/27/13, effective 1/1/14; **ARC 1634C**, IAB 10/1/14, effective 11/5/14; **ARC 1964C**, IAB 4/15/15, effective 5/20/15; **ARC 2403C**, IAB 2/17/16, effective 4/1/16]

875—90.7(89) Fees.

90.7(1) *Special inspector commission fee.* A $55 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

90.7(2) *Certificate fee.* A $40 fee shall be paid for each one-year certificate, an $80 fee shall be paid for each two-year certificate, and a $160 fee shall be paid for each four-year certificate.

90.7(3) *Fees for inspection.* An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

a. A $55 fee for each water heater supply boiler.

b. A $95 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.

c. A $215 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.

d. A $55 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.

e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.

f. Upon receipt of a request for a state inspector to visit or inspect for a reason not required by Iowa Code chapter 89, the labor commissioner may negotiate an appropriate fee.

g. If a boiler or pressure vessel has to be reinspected, there shall be another inspection fee as specified above.

90.7(4) *Fees for attempted inspections.* A $35 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[**ARC 7863B**, IAB 6/17/09, effective 7/1/09; **ARC 8081B**, IAB 8/26/09, effective 9/30/09; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1422C**, IAB 4/16/14, effective 5/21/14]

875—90.8(89) Certificate. No boiler or pressure vessel shall be operated without a current, valid certificate to operate. A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

[**ARC 1964C**, IAB 4/15/15, effective 5/20/15]

875—90.9(89,252J,261) Special inspector commissions.

90.9(1) *Application.* A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

90.9(2) *Expiration.* The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

90.9(3) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

90.9(4) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(6) to 90.9(8).

90.9(5) *Investigations.* Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

90.9(6) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

90.9(7) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 90.9(6);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The National Board revoked or suspended the special inspector's work card;

i. The division received a certificate of noncompliance; or

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs *"a"* to *"h"* of this subrule.

90.9(8) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;

d. The special inspector failed to notify the division in writing of any accident involving an object;

e. The special inspector committed repeated violations as described in subrule 90.9(7);

f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs *"a"* to *"f"* of this subrule;

h. The National Board revoked or suspended the special inspector's work card; or

i. The division received a certificate of noncompliance.

90.9(9) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. Notice of actions. The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

b. Contested cases. The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. Hearing procedures. The hearing procedures in 875—Chapter 1 shall govern.

d. Emergency suspension. Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. Revocation period. A special inspector's commission that has been revoked shall not be reinstated for five years.

h. Concurrent actions. Multiple actions may proceed at the same time against any special inspector.

i. Revoked or suspended commissions. Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—90.10(89) Quality reviews, surveys and audits.

90.10(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

90.10(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and

audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

a. *Assessing quality programs.* The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

b. *ISO 9000 assessments.* The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.11(89) Reporting requirements.

90.11(1) *Control and safety device reports.* Documentation required by this subrule shall be kept on site and shall be available for inspection.

a. The requirements of this subrule do not apply to:

(1) An object within the scope of 875—Chapter 95;

(2) An object within the scope of 875—Chapter 96;

(3) A hot water supply boiler covered by ASME Section IV, Part HLW; or

(4) A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

b. The installer shall complete a Manufacturer's/Installing Contractor's Report for ASME CSD-1 (CSD-1 report) for each newly installed or reinstalled object.

c. A person who installs a new burner, new gas train, or new controller on an object shall complete a CSD-1 report.

d. A person who replaces a part or component of an object shall complete the relevant portions of the CSD-1 report unless the replacement satisfies the design specifications. A copy of an invoice containing the same information as the relevant portions of the CSD-1 report is an acceptable alternative.

90.11(2) *Reporting repairs and alterations.* If the National Board Inspection Code requires that an R-1 Report of Repair or an R-2 Report of Alteration be filed with the National Board, a copy of the National Board form must be simultaneously filed with the labor commissioner.

90.11(3) *Reporting explosions and other incidents.*

a. The following definitions apply to this subrule.

"Incident" means the explosion of a covered object or other failure of a component of a covered object causing injury or acute illness.

"Injury" means a personal injury requiring professional medical care or causing disability exceeding one day.

b. The owner or user of a covered object shall notify the commissioner of an incident. A special inspector investigating an incident shall notify the owner or user of this reporting requirement.

c. Incident reports shall be made by calling (515)281-3647 or (515)281-6533. If the incident occurs during normal division operating hours, notification shall occur before close of business on that day. If the incident occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

d. At the request of the commissioner, a person who submits a report pursuant to this subrule shall also submit a written report that includes the state identification number of the object, name of the owner of the object, and description of the incident.

e. The removal of any part of the damaged object from the premises is forbidden until permission to do so is granted by the state inspector or special inspector who investigated the incident.

f. When an incident involves the failure or destruction of any part of the object, the use of the object is forbidden until it has been made safe and it has passed an inspection by the state inspector or special inspector who investigated the incident.
[**ARC 2589C**, IAB 6/22/16, effective 7/27/16]

875—90.12(89) Publications available for review. Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

875—90.13(89) Notice prior to installation. Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or
2. The National Board's Boiler Installation Report, I-1.

875—90.14(89) Temporary boilers. A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

875—90.15(89) Conversion of a power boiler to a low-pressure boiler. The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

90.15(1) *General requirements.*

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at iowaboilers.gov. At a minimum the notice shall contain the following:

(1) Address, uses, and owner of the building where the boiler is located.

(2) The Iowa identification number assigned to the boiler.

(3) Name and contact information for the person completing the notice.

(4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

(1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.

(2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

90.15(2) *Boilers located outside places of public assembly.* A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

90.15(3) *Boilers located in places of public assembly.* A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

[**ARC 9232B**, IAB 11/17/10, effective 12/22/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, 261, and 272D.

[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed emergency 5/4/99 after Notice 3/24/99—published 6/2/99, effective 7/1/99]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/29/05, Notice 6/8/05—published 8/17/05, effective 9/21/05]
[Filed emergency 9/6/05—published 9/28/05, effective 9/21/05]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06][◊]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08][1]
[Filed Emergency ARC 7863B, IAB 6/17/09, effective 7/1/09]
[Filed ARC 8081B (Notice ARC 7865B, IAB 6/17/09), IAB 8/26/09, effective 9/30/09]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9232B (Notice ARC 9087B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 9790B (Notice ARC 9511B, IAB 5/18/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0416C (Notice ARC 0322C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 0739C (Notice ARC 0647C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]
[Filed ARC 1189C (Notice ARC 1015C, IAB 9/18/13), IAB 11/27/13, effective 1/1/14]
[Filed ARC 1422C (Notice ARC 1333C, IAB 2/19/14), IAB 4/16/14, effective 5/21/14]
[Filed ARC 1634C (Notice ARC 1550C, IAB 7/23/14), IAB 10/1/14, effective 11/5/14]
[Filed ARC 1964C (Notice ARC 1798C, IAB 12/24/14), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2403C (Notice ARC 2251C, IAB 11/25/15), IAB 2/17/16, effective 4/1/16]
[Filed ARC 2589C (Notice ARC 2419C, IAB 2/17/16), IAB 6/22/16, effective 7/27/16]
[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

◊ Two or more ARCs

1 Date corrected IAC Supp. 3/26/08

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

[Prior to 1/14/98, see 347—Chs 41 to 49]
[Prior to 8/16/06, see 875—Ch 203]

875—91.1(89) Codes and code cases adopted by reference.

91.1(1) *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2015) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2015) except for objects that meet one of the following criteria:

a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;

b. An object within the scope of 875—Chapter 95;

c. Rescinded IAB 10/5/11, effective 11/9/11.

d. A miniature boiler installed before March 31, 1967;

e. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or

f. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

91.1(2) *ASME code cases.* Rescinded IAB 2/14/18, effective 3/21/18.

91.1(3) *Inspection code adopted by reference.* The National Board Inspection Code (2015) is adopted by reference, and reinstallations, installations, alterations, and repairs after April 1, 2016, shall comply with it.

91.1(4) *Electric code adopted by reference.* The National Electrical Code (2014) is adopted by reference, and reinstallations and installations after April 1, 2016, shall comply with it.

91.1(5) *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2014), and the Building Services Piping Code, ASME B31.9 (2014), are adopted by reference, and reinstallations and installations after May 20, 2015, shall comply with them up to and including the first valve.

91.1(6) *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2012) is adopted by reference, and reinstallations and installations after October 31, 2013, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

91.1(7) *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2015) are adopted by reference, and installations and reinstallations after April 1, 2016, shall comply with them.

91.1(8) *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2011), is adopted by reference, and installations and reinstallations after October 10, 2012, shall comply with it.

91.1(9) *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2015), is adopted by reference, and installations and reinstallations after April 1, 2016, shall comply with it.

91.1(10) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2014), is adopted by reference, and installations and reinstallations after April 1, 2016, shall comply with it.

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2015), is adopted by reference, and installations and reinstallations after April 1, 2016, shall comply with it.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 8590B**, IAB 3/10/10, effective 4/14/10; **ARC 9232B**, IAB 11/17/10, effective 12/22/10; **ARC 9790B**, IAB 10/5/11, effective 11/9/11; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 0416C**, IAB 10/31/12, effective 12/5/12; **ARC 1011C**, IAB 9/18/13, effective 10/31/13; **ARC 1964C**, IAB 4/15/15, effective 5/20/15; **ARC 2403C**, IAB 2/17/16, effective 4/1/16; **ARC 2589C**, IAB 6/22/16, effective 7/27/16; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—91.2(89) Safety appliance. No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection. An object shall not be operated unless all applicable safety appliances are properly functional and operational.

875—91.3(89) Pressure-reducing valves. Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low-pressure side of the reducing valve when the piping equipment on the low-pressure side does not meet the requirements for the full initial pressure. The relief or safety valves shall be located adjoining or as close as possible to the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valves or safety valves shall be such that the pressure rating of the lowest pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. If a bypass around the reducing valves is used, a safety valve is required on the low-pressure side and shall be of sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low-pressure side. A pressure gage shall be installed on the low-pressure side of a reducing valve.

875—91.4(89) Blowoff equipment. The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees Fahrenheit. If the local jurisdiction has a temperature limit of less than 150 degrees Fahrenheit, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.5(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size of the discharge piping shall not be reduced from the size of the relief valve.

875—91.6(89) Pipe, valve, and fitting requirements.

91.6(1) Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules except where permitted in 875—Chapter 95. Dielectric fittings shall be used where dissimilar metals are joined.

91.6(2) and **91.6(3)** Rescinded IAB 11/18/09, effective 1/1/10.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.7(89) Electric steam generator. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.8(89) Alterations, retrofits and repairs to objects. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.9(89) Boiler door latches. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.10(89) Clearance.

91.10(1) All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

91.10(2) This subrule applies to installations and reinstallations after September 20, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service

clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

875—91.11(89) Fall protection. Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

91.11(1) *Runway platform.* A steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

91.11(2) *Fall protection system.* A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

875—91.12(89) Exit from rooms containing objects. All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

875—91.13(89) Air and ventilation.

91.13(1) *Notice concerning other rules.* The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

91.13(2) *Documentation.* Documentation of compliance with any requirement of this rule shall be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

91.13(3) *National combustion air standards.*

a. Installations and reinstallations. Installations and reinstallations shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

b. Existing objects. An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available from the board's staff upon request.

91.13(4) *Iowa combustion air standard.* A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown above.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—91.14(89) Condensate return tank. Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

875—91.15(89) Conditions not covered. Any condition not governed by these rules shall be governed by the construction or installation code.

875—91.16(89) Nonstandard objects. Rescinded IAB 3/12/08, effective 4/16/08.

875—91.17(89) English language and U.S. customary units required. All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

875—91.18(89) National Board registration. Except for cast iron boilers, cast aluminum boilers, and objects governed by 875—Chapter 95, all objects shall be registered with the National Board.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.19(89) ASME stamp. Except for water heaters regulated by 875—Chapter 95, all objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.20(89) CSD-1 reports and related documentation. Rescinded **ARC 2589C**, IAB 6/22/16, effective 7/27/16.

These rules are intended to implement Iowa Code chapter 89.

[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 6/27/07, Notice 5/9/07—published 7/18/07, effective 8/22/07]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08]
[Filed 6/24/08, Notice 5/7/08—published 7/16/08, effective 8/20/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 8590B (Notice ARC 8391B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 9232B (Notice ARC 9087B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 9790B (Notice ARC 9511B, IAB 5/18/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0416C (Notice ARC 0322C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]

[Filed ARC 1011C (Notice ARC 0817C, IAB 7/10/13), IAB 9/18/13, effective 10/31/13]
[Filed ARC 1964C (Notice ARC 1798C, IAB 12/24/14), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2403C (Notice ARC 2251C, IAB 11/25/15), IAB 2/17/16, effective 4/1/16]
[Filed ARC 2589C (Notice ARC 2419C, IAB 2/17/16), IAB 6/22/16, effective 7/27/16]
[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]

CHAPTER 93
MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 1/14/98, see Labor Services[347] Ch 45]
[Prior to 8/16/06, see 875—Ch 206]

875—93.1(89) Scope. This chapter sets forth requirements in addition to those contained in 875—Chapter 92 for boilers that:

1. Have a heating surface of 20 square feet or less;
2. Have a gross volume of 5 cubic feet or less, excluding casing and insulation;
3. Have an inside shell diameter of 16 inches or less;
4. Have 100 psig maximum allowable working pressure; and
5. Were installed prior to September 20, 2006.

For objects covered by this chapter, if there is a conflict between this chapter and Chapter 92, this chapter shall govern the issue.

875—93.2(89) Code adopted by reference. The current edition of the National Board Inspection Code adopted by reference in rule 875—91.1(89) shall apply to objects covered by this chapter.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 3635C**, IAB 2/14/18, effective 3/21/18]

875—93.3(89) Maximum working pressure. The maximum allowed working pressure is to be determined by rule 875—92.4(89).

875—93.4(89) Safety valves. Boilers covered by this chapter shall be equipped with a sealed spring-loaded pop safety valve of not less than ½-inch pipe size. The minimum relieving capacity of the safety valve shall be determined in accordance with rule 875—92.7(89). In addition to these requirements, the safety valve shall have sufficient capacity to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6 percent above maximum allowable working pressure.

875—93.5(89) Steam stop valves. Each steam line from a miniature power boiler shall be provided with a stop valve located as close to the boiler shell or drum as is practicable except when the boiler and steam receiver are operated as a closed system.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.6(89) Water gages.

93.6(1) Miniature power boilers for operation with a definite water level shall be equipped with a glass water gage for determining the water level. The lowest permissible water level for vertical boilers shall be at a point one-third of the height of the shell above the bottom head or tube sheet. When the boiler is equipped with an internal furnace, the water level shall not be less than one-third of the length of the tubes above the top of the furnace tube sheet. In the case of small boilers operated in a closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bull's eye type may be used.

93.6(2) Miniature power boilers shall have the lowest visible part of the water gage glass located at least 1 inch above the lowest permissible water level specified by the manufacturer.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.7(89) Feedwater supply.

93.7(1) Except for miniature power boilers operating without the extraction of steam, miniature power boilers shall be provided with at least one feed pump or other feeding device unless the boiler feed line is connected to a water main carrying sufficient pressure to feed the boiler. In the latter case, in lieu of a feeding device, a suitable connection or opening shall be provided to fill the boiler when cold. Such connection shall be no less than ½-inch pipe size for iron or steel pipe and ¼ inch for brass or copper pipe.

93.7(2) The feed pipe shall be provided with a check valve and a stop valve of a size not less than that of the pipe. The feed water may be delivered through the blowoff opening if desired.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.8(89) Blowoff. Miniature power boilers shall be equipped with a blowoff connection, not less than ½-inch pipe size, located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than ½-inch pipe size.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.9(89) Washout openings. Miniature power boilers exceeding 12 inches internal diameter or having more than ten square feet of heating surface shall be fitted with not less than three brass washout plugs of 1-inch pipe size that shall be screwed into openings in the shell near the bottom. In miniature power boilers of the closed type system heated by removable internal electric heating elements, the openings for these elements when suitable for cleaning purposes may be substituted for washout openings. Boilers not exceeding 12 inches internal diameter and having less than ten square feet of heating surface need not have more than two 1-inch openings for cleanouts, one of which may be used for the attachment of the blowoff valve; these openings shall be opposite each other where possible. All threaded openings shall be opposite each other where possible. All threaded openings in the boiler shall be provided with a riveted or welded reinforcement to give four full threads therein.

Electric boilers of a design employing a removable top cover flange for inspection and cleaning need not be fitted with washout openings.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.10(89) Fixtures and fittings. All valves, pipe fittings, and appliances connected to a miniature power boiler shall be equal to at least the minimal requirements of the construction or installation code and shall be rated for not less than the maximum allowable working pressure of the miniature power boiler. In no case shall the rating be for less than 125 pounds.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 89.

[Filed 7/15/59; amended 5/4/67]
[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]
[Filed emergency 4/4/86—published 4/23/86, effective 4/4/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]
[Filed 5/16/96, Notice 11/22/95—published 6/5/96, effective 8/1/96]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 3635C (Notice ARC 3504C, IAB 12/20/17), IAB 2/14/18, effective 3/21/18]