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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

### **Iowa Finance Authority[265]**

- Replace Chapter 1
- Replace Chapter 7
- Replace Chapter 9
- Replace Chapter 13
- Replace Chapters 15 to 18
- Replace Chapter 22
- Replace Chapters 30 and 31
- Replace Chapter 37
- Replace Chapter 44

### **Professional Licensure Division[645]**

- Replace Analysis
- Replace Chapters 222 to 224
- Replace Chapter 240

### **Pharmacy Board[657]**

- Replace Chapter 39

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

- Replace Analysis
- Replace Chapter 82
- Replace Chapter 107
- Replace Chapter 223

### **Labor Services Division[875]**

- Replace Chapter 26



CHAPTER 1  
GENERAL

**265—1.1(16) Purpose.** This chapter describes the mission, organization, programs and operations of the Iowa finance authority (authority), including the office where and the means by which interested persons may obtain information and make submissions or requests.

**265—1.2(16) Mission.** The authority was established in 1975 pursuant to Iowa Code chapter 16. The mission of the authority is to finance, administer, advance and preserve affordable housing and to promote community and economic development for Iowans.

**265—1.3(16) Organization, programs and operations.**

**1.3(1) Location.** The main office of the authority is located at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. Office hours for the authority are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The title guaranty division (division) of the authority is located at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. Office hours for the division are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Additional information concerning the division can be found in Chapter 9 of the authority's administrative rules (265—Chapter 9).

The authority's website address is [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov), and its telephone and facsimile numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

**1.3(2) Authority board and staff.** The powers of the authority are vested in and exercised by a board of nine members, appointed by the governor and subject to confirmation by the senate. A chairperson, vice-chairperson and treasurer are elected annually by the members, generally at the July board meeting each year. Authority staff consists of an executive director, also appointed by the governor and subject to confirmation by the senate, and additional staff as approved by the executive director.

**1.3(3) Meetings.** Regular meetings of the authority shall be held on the first Wednesday of each month, unless another time of meeting is designated by the authority. Meetings may also be held at the call of the chairperson or whenever two members so request. The purposes of such meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and to take other actions as necessary and appropriate. The authority will give advance public notice of the specific date, time and place of each authority meeting, and will post the tentative agenda for each meeting at the main office of the authority, as well as on the authority's website, at least 24 hours before commencement of the meeting. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. Minutes of meetings are available for viewing at the authority's offices or via the authority's website. Five members of the board constitute a quorum and the affirmative vote of a majority of the appointed board members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

**1.3(4) Programs of the authority.** The authority's program subdivisions include: housing, economic development, state revolving fund, and title guaranty division. The authority operates the following programs, among others (this list is not exhaustive), under these subdivisions:

*a.* Housing: FirstHome, FirstHome Plus, Housing Assistance Fund, Iowa Housing Assistance Program, Low-Income Housing Tax Credits, Mortgage Credit Certificates (MCCs), Multifamily Preservation Loans, State Housing Trust Fund and Section 8 Contract Administration.

*b.* Economic development: Main Street Revitalization Loans, Economic Development Loans and Private Activity Bond Cap Allocation.

*c.* State revolving fund: Iowa Water Pollution Control and Drinking Water Facilities Financing Program.

d. Title guaranty division: Issuance of Title Guaranty Certificates.

**1.3(5) Administration of programs.** The authority may adopt manuals, instructions or other statements as necessary to assist its employees in administering its programs and to permit persons and organizations to participate in such programs. Copies of all such manuals, instructions and other statements shall be kept in the authority's offices and are available for public inspection unless excepted under applicable law.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—1.4(16) Location where the public may submit requests or obtain information.** Requests for assistance, information, inquiries, submissions, petitions and other requests may be directed to the authority at the address set forth in subrule 1.3(1). Requests may be made personally or by telephone, mail, email or any other medium available.

**265—1.5(16) Forms.** The executive director shall prepare and, as needed, revise and amend such forms as necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority. The authority shall annually assess the effectiveness of its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient authority operations.

These rules are intended to implement Iowa Code sections 17A.3(1) and 16.5(1) "r."

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CHAPTER 7  
CONTESTED CASES

**265—7.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the authority.

**265—7.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*Authority*” means the Iowa finance authority, as designated in Iowa Code chapter 220.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Executive director*” means the executive director of the authority or an authorized representative of the executive director.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the board of the authority.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire board of the authority did not preside.

**265—7.3(17A) Time requirements.**

**7.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**7.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. 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.

**265—7.4(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding from the authority within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the authority action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific authority action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

**265—7.5(17A) Notice of hearing.**

**7.5(1) Delivery.** Delivery of the notice of hearing to the person requesting a contested case constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

**7.5(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the authority or other party 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;

- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the authority or the state and of parties' counsel where known;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the board of the authority, members of the authority's board, administrative law judge from the department of inspections and appeals); and
- i.* Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1) and rule 7.6(17A), that the presiding officer be an administrative law judge.

**265—7.6(17A) Presiding officer.**

**7.6(1)** In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chairperson of the authority will determine whether the hearing shall be held before the authority, one or more members of the authority's board, or an administrative law judge. Any party who 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 or describes the presiding officer as the authority's board or members of the authority's board.

**7.6(2)** The executive director may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the authority nor any officer of the authority 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 interauthority appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

**7.6(3)** The executive director 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 contingent upon the availability of an administrative law judge with the qualifications identified in subrule 7.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**7.6(4)** An administrative law judge assigned to act as presiding officer in any of the authority's cases shall have the following technical expertise unless waived by the authority.

**7.6(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board of the authority. A party must seek any available intra-authority appeal in order to exhaust adequate administrative remedies.

**7.6(6)** Unless otherwise provided by law, members of the authority's board, when reviewing a proposed decision upon intra-authority appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**265—7.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the authority in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**265—7.8(17A) Telephone or video proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings or interactive video proceedings, including the hearing for the contested

case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or an interactive video hearing may be assessed equally to each party.

#### **265—7.9(17A) Disqualification.**

**7.9(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.

**7.9(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 authority 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 as amended by 1998 Iowa Acts, chapter 1202, section 9, and subrules 7.9(3) and 7.23(9).

**7.9(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.

**7.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

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 265—7.25(17A) and seek a stay under rule 265—7.29(17A).

#### **265—7.10(17A) Consolidation—severance.**

**7.10(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.

**7.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**265—7.11(17A) Pleadings.**

**7.11(1) Pleadings** may be required by rule, by the notice of hearing, or by order of the presiding officer.

**7.11(2) Petition.**

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**7.11(3) Answer.** An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**7.11(4) Amendment.** Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**265—7.12(17A) Service and filing of pleadings and other papers.**

**7.12(1) When service required.** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the authority, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**7.12(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 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.

**7.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the executive director, Iowa finance authority, at the address set forth in rule 265—1.3(16). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

**7.12(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Iowa finance authority at its office located at the address set forth in rule

265—1.3(16), 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.

**7.12(5) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (authority office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

### **265—7.13(17A) Discovery.**

**7.13(1)** 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.

**7.13(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**7.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

### **265—7.14(17A) Subpoenas.**

#### **7.14(1) Issuance.**

*a.* An authority subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**7.14(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

### **265—7.15(17A) Motions.**

**7.15(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.

**7.15(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 authority or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**7.15(3)** The presiding officer may schedule oral argument on any motion.

**7.15(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 authority or an order of the presiding officer.

**7.15(5)** Motions for summary judgment. 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 265—7.28(17A) and appeal pursuant to rule 265—7.27(17A).

#### **265—7.16(17A) Prehearing conference.**

**7.16(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 or on behalf of the authority to all parties. For good cause the presiding officer may permit variances from this rule.

**7.16(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; and

*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.

**7.16(3)** In addition to the requirements of subrule 7.16(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 which 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 which will expedite the hearing.

**7.16(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.

**265—7.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**7.17(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 authority may waive notice of such requests for a particular case or an entire class of cases.

**7.17(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.

**265—7.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with authority rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**265—7.19(17A) Intervention.**

**7.19(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**7.19(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**7.19(3) Grounds for intervention.** The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**7.19(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**265—7.20(17A) Hearing procedures.**

**7.20(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**7.20(2)** All objections shall be timely made and stated on the record.

**7.20(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**7.20(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.

**7.20(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**7.20(6)** Witnesses may be sequestered during the hearing.

**7.20(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. 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, parties may be given the opportunity to present final arguments.

**265—7.21(17A) Evidence.**

**7.21(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.

**7.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**7.21(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**7.21(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.

**7.21(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.

**7.21(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.

**265—7.22(17A) Default.**

**7.22(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**7.22(2)** 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.

**7.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final authority 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 rule 265—7.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**7.22(4)** 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.

**7.22(5)** 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.

**7.22(6)** "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.

**7.22(7)** 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. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(17A).

**7.22(8)** 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.

**7.22(9)** 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.

**7.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 265—7.29(17A).

**265—7.23(17A) Ex parte communication.**

**7.23(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. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 7.9(2), 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.

**7.23(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.

**7.23(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**7.23(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 in compliance with rule 265—7.12(17A) 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.

**7.23(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.

**7.23(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 7.23(1).

**7.23(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 265—7.17(17A).

**7.23(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. 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.

**7.23(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code subsection 17A.13(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.

**7.23(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the authority. Violation of ex parte communication prohibitions by authority personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**265—7.24(17A) Recording costs.** Upon request, the authority shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**265—7.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board of the authority may review an interlocutory order of the presiding officer. 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 that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer 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 time for compliance with the order or the date of hearing, whichever is first.

**265—7.26(17A) Posthearing procedures and orders.**

**7.26(1) Filing by parties of briefs and proposed findings.** The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

**7.26(2) Final decision or order.**

*a.* When a quorum of the entire board of the authority presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

*b.* In a contested case in which the hearing is held before an administrative law judge or a panel of the authority's board members constituting less than a quorum of the board, the presiding officer or panel

shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the authority without further proceedings unless there is an appeal to, or review on motion of, the authority within 30 days.

**7.26(3) Decisions and orders.**

*a. By whom prepared.* The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

*b. Content of decision or order.* The proposed or final decision or order shall:

(1) Be in writing or stated in the record.  
(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed finding of fact in accordance with subrule 7.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

*c. Delivery.* A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

**265—7.27(17A) Appeals and review.**

**7.27(1) Appeal by party.** Any adversely affected party may appeal a proposed decision to the board of the authority within 30 days after issuance of the proposed decision.

**7.27(2) Review.** The board of the authority may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**7.27(3) Notice of appeal.** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the authority. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a member of the authority's board or the authority initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

- a.* The parties initiating the appeal;
- b.* The proposed decision or order appealed from;
- c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d.* The relief sought;
- e.* The grounds for relief.

**7.27(4) 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 of the authority may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**7.27(5) Scheduling.** The authority shall issue a schedule for consideration of the appeal.

**7.27(6) 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 authority may resolve the appeal on the briefs or provide an opportunity for oral argument. The authority may shorten or extend the briefing period as appropriate.

**265—7.28(17A) Applications for rehearing.**

**7.28(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**7.28(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. In addition, the application shall state whether the applicant desires reconsideration of all or part of the authority decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

**7.28(3)** *Time of filing.* The application shall be filed with the authority within 20 days after issuance of the final decision.

**7.28(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. If the application does not contain a certificate of service, the authority shall serve copies on all parties.

**7.28(5)** *Disposition.* Any application for a rehearing shall be deemed denied unless the authority grants the application within 20 days after its filing.

**265—7.29(17A) Stays of authority actions.**

**7.29(1)** *When available.*

*a.* Any party to a contested case proceeding may petition the authority for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the authority. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The authority may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition the authority 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.

**7.29(2)** *When granted.* In determining whether to grant a stay, the presiding officer or authority shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

**7.29(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the authority or any other party.

**265—7.30(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**265—7.31(17A) Emergency adjudicative proceedings.**

**7.31(1)** *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the authority may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the authority by emergency adjudicative order. Before issuing an emergency adjudicative order the authority shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the authority is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the authority is necessary to avoid the immediate danger.

**7.31(2) Issuance of order.**

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the authority's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the authority;

(3) Certified mail to the last address on file with the authority;

(4) First-class mail to the last address on file with the authority; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that authority orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the authority shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**7.31(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the authority shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**7.31(4) Completion of proceedings.** After the issuance of an emergency adjudicative order, the authority shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which the authority's proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further authority proceedings to a later date will be granted only in compelling circumstances upon application in writing.

**265—7.32(17A,16) Informal procedure prior to hearing.** Any person who desires to pursue informal settlement of any contested case may make a request for an informal settlement to the executive director. When the authority is a party, all informal settlements shall be made by the executive director. All informal settlements are subject to ratification by the authority. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the authority meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the authority's disposition of the request. If the authority determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 265—7.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 265—7.5(17A).

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 9  
TITLE GUARANTY DIVISION

**265—9.1(16) Definitions.** The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

*“Abstract”* means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, “abstract” may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

*“Abstractor”* means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

*“Authority”* means the Iowa finance authority established by Iowa Code chapter 16.

*“Certificate”* means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

*“Claim”* means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

*“Claim loss”* means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys’ fees, and all other expenses and costs related to or arising from the claim.

*“Closing protection letter”* means the division’s written agreement to indemnify a lender or borrower or both for loss caused by a participating closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

*“Commitment”* means the division’s written offer to issue a certificate.

*“Division”* means Iowa title guaranty, a division of the Iowa finance authority.

*“Division board”* means the board of the division created pursuant to Iowa Code section 16.2A(1).

*“Field issuer”* means a participant authorized by the division to issue commitments and certificates.

*“Mortgage release certificate”* means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

*“Participant”* means a participating attorney, a participating abstractor, or a participating closer.

*“Participating abstractor”* means an abstractor who is authorized by the division to prepare abstracts for division purposes.

*“Participating attorney”* means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

*“Participating closer”* means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

*“Party”* means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

*“Person”* means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.2(16) Purpose.** This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which a person may obtain information and make submissions or requests.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.3(16) Mission.** The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state of Iowa and to perform other duties as assigned by Iowa law. Surplus funds generated by the division shall be transferred to the authority's housing assistance fund after providing for adequate reserves and for the operating expenses of the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.4(16) Organization.**

**9.4(1) Location.** The office of the division is located at the address set forth in rule 265—1.3(16). Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's website address is [www.iowatitleguaranty.gov](http://www.iowatitleguaranty.gov), and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); and (515)725-4901 (facsimile). The division's email address is [titleguaranty@iowa.gov](mailto:titleguaranty@iowa.gov). Inquiries, submissions, applications and other requests for information may be directed to the division at the address set forth herein. Requests may be made personally or by telephone, fax, mail or email.

**9.4(2) Division board.** A chair and vice chair shall be elected annually by the members of the division board at the first quarterly meeting following July 1 of each year, which is the beginning of the division's fiscal year.

**9.4(3) Meetings.** Meetings of the division board shall generally be held quarterly on the date and time determined by the division board. Meetings of the division board may also be held at the call of the chair or on written request of two division board members. The division will give advance public notice of the specific date, time and place of each division board meeting. At least 24 hours before commencement of a division board meeting, the division will post the tentative agenda at the office of the division and on the division's website. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division's website. Three members of the division board constitute a quorum. An affirmative vote of a majority of the division board members is necessary for any substantive action taken by the division board. The majority shall not include any division board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter; ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—9.5(16) Operation.** The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

**9.5(1) Commitments, certificates, forms and manuals.** The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

*a.* The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

*b.* If a participant fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

*c.* A participant shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant to account for any form supplied by the division, or the failure of the participant to comply with the requirements of this rule.

**9.5(2) Application for commitments and certificates.** The division shall make an application for commitments and certificates available at the office of the division and on the division's website.

**9.5(3) Rates.** The division shall set the rates for certificates and closing protection letters in an amount sufficient to permit the title guaranty program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims. In transactions involving extraordinary risk or unusual or unique endorsements, the division may charge additional fees.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

## **265—9.6(16) Participants.**

**9.6(1) General provisions.** An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

**9.6(2) Participant application.** Applications for participation and renewal are available on the division's website. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

**9.6(3) Eligibility considerations.** In determining whether to approve or deny a participant application, the division may consider the following, including but not limited to:

- a. The needs of the public and the needs of existing or potential customers of the applicant.
- b. A history of the operation and management of the applicant's business.
- c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d. A credit report or criminal background check of the applicant or the applicant's employees.
- e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
- f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- g. Compliance with the title and settlement best practices adopted by the division.
- h. Other factors as determined by the division.

**9.6(4) Participation agreement.** The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

**9.6(5) Annual fee.** A participant may be required to pay an annual fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division.

**9.6(6) Professional liability insurance.** A participant shall maintain professional liability insurance, also known as errors and omissions insurance, at all times while acting as an agent of the division, with such coverage and in such amounts as the division may determine.

**9.6(7) Agent relationship.** A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, the Code of Iowa, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

**9.6(8) Conflict of interest.** A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

**9.6(9) Clearance of title objections.** All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

**9.6(10) Commitment and certificate coverage limitations.** A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable

maximum amount of coverage, as determined by the division. If authorization required under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

**9.6(11) Document retention.** A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the effective date of the certificate or the effective date of the commitment if a certificate is not issued. A participating abstractor shall retain a written or electronic copy of each abstract prepared for division purposes and shall provide a copy to the division upon request.

**9.6(12) Training.** The division may require a participant and the participant's staff, as a condition of participation, to participate in training sessions or continuing education seminars as deemed necessary by the division in order to ensure compliance with division requirements and procedures.

**9.6(13) Compliance.** Participants shall comply with the Code of Iowa, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include, but not be limited to, a review of the participant's commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details. An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) "a."

**9.6(14) Revocation.** The division has discretion to revoke a participant's authorization to provide services on behalf of the division for reasons including, but not limited to, the following:

- a. Failure to comply with the terms and conditions of the participation agreement.
- b. Failure to submit an annual renewal application.
- c. Knowingly withholding or misrepresenting material facts relied upon by the division.
- d. Fraud, theft, dishonesty, or misappropriation of funds or documents.
- e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.
- f. A finding by the division director of material noncompliance with the Code of Iowa, these rules, manuals, and any other written instructions given by the division.
- g. Other factors as determined by the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

#### **265—9.7(16) Services offered.**

**9.7(1) Abstracting.** Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. *Title plant.* A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under paragraph 9.7(1) "c" or authorized under paragraph 9.7(1) "d." Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. *Intent to build title plant.* The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by the division, upon review of the following:

- (1) The abstractor's business plan;
- (2) Evidence that a title plant will be built for a specific county or counties within three years;
- (3) A time line for completion of the title plant; and
- (4) A description of the applicant's abstracting experience.

c. *Grandfathered attorney.* A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally

or through persons under the participating attorney's supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

*d. Title plant waivers.* The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5) "b" allows the division board to waive the up-to-date title plant requirements under certain conditions.

(1) General provisions. The division board shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall provide an application form at the office of the division and on the division's website. An applicant must submit an application in writing to the attention of the division director at the office of the division.

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, email address, and telephone number of the applicant;
2. The applicant's business plan;
3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant's abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under 9.7(1) "d"(5) and 9.7(1) "d"(6) "4"; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The division shall publish notice of an application on the division's website within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.
3. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division board.

4. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

(5) Criteria for title plant waiver. Pursuant to Iowa Code section 16.91(5) "b," the division board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5) "a"(2) if the board finds the following:

1. The title plant requirement imposes a hardship to the applicant; and
2. The waiver is:
  - Clearly in the public interest; or
  - Absolutely necessary to ensure availability of certificates throughout the state.
3. For purposes of paragraph 9.7(1) "d," "hardship" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.
4. For purposes of paragraph 9.7(1) "d," "public interest" means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title

insurance, increasing the division's market share, improving the quality of land titles, and protecting consumers.

(6) Board meeting and ruling.

1. The review of a waiver application is not a contested case proceeding.

2. The division director or designee shall review an application and its supporting documentation.

The division director shall present to the division board a proposed written ruling. The division board shall adopt, amend or reject the proposed written ruling. If the proposed written ruling is rejected, the division board shall instruct the division director to prepare an alternative written ruling to be considered at a subsequent division board meeting.

3. The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver. The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.

4. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered include, but are not limited to, the division director's proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the participating attorney or participating abstractor, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. The division board shall give considerable weight to an applicant's experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate. The division board shall also give considerable weight to a recommendation from a participating abstractor or participating attorney who supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract. Consideration should be afforded to rulings on prior waiver requests, but the division board shall not be bound by such rulings. The division board may limit a waiver as to county, or transaction type, or both.

5. The written ruling shall be mailed to the applicant within 7 days of its issuance.

6. The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(7) Conditions. A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant's meeting the requirements for a participant in rule 265—9.6(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division board.

(8) Withdrawal of a waiver. A waiver issued by the division board may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division board in granting the waiver; or

2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or

3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or

4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.6(14).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(9) Public availability. Applications for waivers and written rulings are public records under Iowa Code chapter 22. Some applications or written rulings may contain information that the division is

authorized or required to keep confidential. The division may redact confidential information from applications or written rulings prior to public inspection or dissemination.

**9.7(2) Issuing title opinions.**

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

**9.7(3) Issuing commitments and certificates.** Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

**9.7(4) Issuing closing protection letters.**

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary. [ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.8(16) Claims.**

**9.8(1) Claim procedures.** In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, email, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

c. A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

**9.8(2) Claim loss recovery.**

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract, title opinion, commitment, or certificate.

*c.* The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.8(2)“*d*,” that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract, title opinion, commitment or certificate;

(5) Issuance of an abstract, title opinion, commitment or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division.

*d.* Unless another rule, the Code of Iowa, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“*c*”(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.8(2)“*c*”(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“*c*”(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed the Code of Iowa, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“*c*”(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(6), the division may demand reimbursement from the party if the party failed to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

*e.* The division board may establish levels of authority, including dollar amounts, for the division for the settlement of claims made against the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.9(16) Mortgage release certificate.** Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

**9.9(1) Application.** The division shall provide a mortgage release application at the office of the division and on the division’s website. The following may submit an application for a mortgage release certificate:

*a.* A person authorized to regularly lend moneys to be secured by a mortgage on real property in Iowa.

*b.* A licensed real estate broker.

*c.* A licensed attorney.

*d.* A participating abstractor.

*e.* A licensed closing agent.

**9.9(2) Application fee.** An applicant may be required to pay a fee to apply for a mortgage release certificate. The fee shall be set by the division.

**9.9(3) Maximum principal amount of mortgage.** The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

**9.9(4) Authority to sign certificate.** A mortgage release certificate shall be executed by the division director or designee of the division director.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.10(16) Rules of construction.** In this chapter, the following rules of construction shall be observed:

1. The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.

2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.

3. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

**265—9.11(16) Seal.** The division shall have a corporate seal that may be altered by the division from time to time.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.94, 17A.3, 17A.9, 17A.10 and 535.8(10).

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[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date of 9.7(2), definition of “Title plant” delayed 70 days by the Administrative Rules Review Committee at its meeting held December 9, 2008.

<sup>2</sup> June 1, 2016, effective date of the rescission of former 9.1 to 9.22 and the adoption of new 9.1 to 9.11 [ARC 2506C] delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held May 10, 2016.

CHAPTER 13  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa finance authority hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

**265—13.1(17A,22) Definitions.**

"Agency" means the Iowa finance authority.

**265—13.3(17A,22) Requests for access to records.** As used in this chapter:

**13.3(1) Location of record.** A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Iowa finance authority at the address set forth in rule 265—1.3(16). The Iowa finance authority will forward the request to the appropriate person.

**13.3(2) Office hours.** Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.  
[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—13.4(17A,22) Access to confidential records.** The following procedures for access to confidential records are in addition to those specified for all records in rule 265—13.3(17A,22).

**265—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, the subject of a record shall have the right to have a written statement of additions, dissents, or objections entered into the record. The subject shall send the statement to the custodian of the record or to the Iowa finance authority. The statement must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

**265—13.9(17A,22) Availability of records.** Authority records not routinely available for public inspection. The following records are confidential and not routinely available for public inspection.

**13.9(1)** Materials that are specifically exempted from disclosure by statute and which the authority may in its discretion withhold from public inspection. Records the authority is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:

a. Records that represent the work product of an attorney, which are related to litigation or claim made by or against a public body.

b. Reports made to the authority which, if released, would give advantage to competitors and serve no public purpose.

c. Personal information in confidential personnel records.

d. Records of identity of owners of public bonds or obligations maintained as provided in Iowa Code section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

e. Communications that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination, included but not limited to, financial statements, security agreements, notes, mortgages, partnership agreements, articles of incorporation, tax returns, credit reports and underwriting decisions to the extent they contain personally identifiable information.

f. Materials that are specifically exempted from disclosure by statute and which the authority is prohibited from making available for public inspection.

**13.9(2)** The authority, in the implementation of this program, must collect personally identifiable information under Iowa Code chapter 16 and federal statutes and regulations governing the issuance

of debt instruments by the authority. Such personally identifiable information is confidential and includes, but is not limited to, financial statements, security agreements, notes, mortgages, partnership agreements, articles of incorporation, tax returns, credit reports, underwriting decisions as they relate to bond financings, tax credit programs, loans administered by the authority and other authority programs as authorized by law.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 15  
PURCHASING

**265—15.1(16) Applicability of competitive bidding.** Items, including goods or services, that are expected to cost in the aggregate in excess of \$50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the authority, or through the department of administrative services whenever such procurement is in the best interests of the authority, as determined by the authority. Items, including goods or services, expected to cost \$50,000 or less in the aggregate may be obtained in any manner deemed appropriate by the authority.

Notwithstanding the foregoing, the authority may exempt any item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the executive director of the authority determines, in the executive director's sole discretion, that the authority's best interests will be served by exemption from the bidding process.

**265—15.2(16) Methods of obtaining bids or proposals used by the authority.** Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the authority shall choose the method of bidding to be utilized.

**15.2(1) Formal bids.**

*a.* To solicit formal bids, the authority shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the authority. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet website.

*b.* The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

*c.* Formal bids received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened, they shall be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations shall be maintained at the authority for one year following the date on which the bids were opened.

*d.* An award shall be made within 60 calendar days from the date of the bid opening, unless a different time frame is stated by the authority in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

**15.2(2) Informal bids.**

*a.* Informal bids may be obtained by the authority through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the authority shall contact selected vendors supplying the goods or services sought by the authority and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet website.

*b.* Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a printout shall be used to record the bid received. Following the submission deadline, the authority shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the authority for one year following the submission deadline.

c. If an award is not made within the time frame indicated by the authority when requesting bids, all bids shall be deemed rejected.

**15.2(3) Request for proposals.** Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the authority may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the authority's requirements and goals to allow the vendor to propose a solution to the authority's requirements.

a. The authority shall prepare a written request for proposals and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the authority.

b. An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the authority in the request for proposals or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

c. At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process, including the submission deadline; administrative requirements for submitting the proposal and the format required by the authority; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the authority anticipates may affect the terms of the vendor's proposal.

**265—15.3(16) Items purchased through the department of administrative services.** Goods and services may be obtained by the authority through the department of administrative services (DAS) whenever procurement through DAS is in the best interests of the authority. Items procured through DAS may be obtained by DAS in any manner it deems appropriate.

**265—15.4(16) Posting solicitations.** Formal bids and requests for proposals issued by the authority shall be posted to the authority's Internet website. The posting shall indicate that it is a notice to prospective bidders, contain the due date and time of opening of the bid or proposal, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

[ARC 0430C, IAB 10/31/12, effective 12/5/12]

**265—15.5(16) Contract purchases.** The authority may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

**265—15.6(16) Blanket purchase agreements.** If the authority foresees a requirement for frequent purchases of off-the-shelf items, the authority may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

**265—15.7(16) Bids and proposals to conform to specifications.** All bids and proposals must conform to the specifications indicated by the authority. Bids and proposals that do not conform to the specifications stated may be rejected. The authority reserves the right to waive deficiencies in the bids or proposals if in the judgment of the authority its best interests would be served by the waiver.

**265—15.8(16) Time of delivery.** When evaluating bids or proposals, the authority may consider the time of delivery when determining the successful vendor.

**265—15.9(16) Cash discounts.** When evaluating bids or proposals, the authority may consider cash discounts.

**265—15.10(16) Ties.** The authority shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the authority shall document the drawing.

**265—15.11(16) Time of submission.** All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the authority prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the authority prior to the submission deadline indicated by the authority. Formal bids and proposals shall be marked by the authority with the date and time received by the authority. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

**265—15.12(16) Modification or withdrawal of bids.** Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the authority if the authority finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the authority.

**265—15.13(16) Financial security.** The authority may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the authority, or any other form specified by the authority.

**265—15.14(16) Rejection of bids and proposals.** The authority reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the authority's requirements, or for any other reason if the authority determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the authority at any time deemed convenient by the authority.

**265—15.15(16) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa finance authority board at the address set forth in rule 265—1.3(16) within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at that address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the authority's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

These rules are intended to implement Iowa Code section 16.5(1) "f."

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[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]



CHAPTER 16  
DECLARATORY ORDERS

**265—16.1(17A) Petition for declaratory order.** Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority, at the address set forth in rule 265—1.3(16). A petition is deemed filed when it is received by the authority. The authority shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE  
IOWA FINANCE AUTHORITY

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Petition by (Name of Petitioner)  
for a Declaratory Order on  
(Cite provisions of law involved).



PETITION FOR  
DECLARATORY ORDER

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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 265—16.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—16.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 265—16.6(17A) to whom notice is required by any provision of law. The authority may also give notice to any other persons.

**265—16.3(17A) Intervention.**

**16.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file 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.

**16.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the authority.

**16.3(3)** A petition for intervention shall be filed at Iowa finance authority at the address set forth in rule 265—1.3(16). Such a petition is deemed filed when it is received by the authority. The authority 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 petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA FINANCE AUTHORITY	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	<div style="font-size: 3em; line-height: 1;">}</div> PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—16.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**265—16.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). [ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—16.6(17A) Service and filing of petitions and other papers.**

**16.6(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 their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**16.6(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 Iowa finance authority at the address set forth in rule 265—1.3(16). Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

**16.6(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 rule 265—7.12(17A).

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—16.7(17A) Consideration.** Upon request by petitioner, the authority must schedule a brief and informal meeting between the original petitioner, all intervenors, and the authority, a member of the authority's board, or a member of the staff of the authority, to discuss the questions raised. The authority

may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

**265—16.8(17A) Action on petition.**

**16.8(1)** Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**16.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 265—7.2(17A).

**265—16.9(17A) Refusal to issue order.**

**16.9(1)** The authority shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.
3. The authority 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 authority 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 authority 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 petitioner.
10. The petitioner requests the authority to determine whether a statute is unconstitutional on its face.

**16.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final authority action on the petition.

**16.9(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 the refusal to issue an order.

**265—16.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**265—16.11(17A) 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.

**265—16.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the authority, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

persons, a declaratory order serves only as precedent and is not binding on the authority. The issuance of a declaratory order constitutes final authority action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

CHAPTER 17  
PROCEDURE FOR RULE MAKING

**265—17.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**265—17.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the authority may, before publication of a Notice of Intended Action under Iowa Code subsection 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the authority by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**265—17.3(17A) Public rule-making docket.**

**17.3(1) Docket maintained.** The authority shall maintain a current public rule-making docket.

**17.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the authority. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the authority for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of authority personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the authority of that possible rule. The authority may also include in the docket other subjects upon which public comment is desired.

**17.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any authority determinations with respect thereto;
- h. Any known timetable for authority decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**265—17.4(17A) Notice of proposed rule making.**

**17.4(1) Contents.** At least 35 days before the adoption of a rule the authority shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;

- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the authority shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the authority for the resolution of each of those issues.

**17.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 17.12(2) of this chapter.

**17.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the authority a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the authority shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the authority for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

#### **265—17.5(17A) Public participation.**

**17.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16), or the person designated in the Notice of Intended Action.

**17.5(2) *Oral proceedings.*** The authority may, at any time, schedule an oral proceeding on a proposed rule. The authority shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the authority by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

**17.5(3) *Conduct of oral proceedings.***

**a. *Applicability.*** This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

**b. *Scheduling and notice.*** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

**c. *Presiding officer.*** The authority, a member of the authority, or another person designated by the authority who will be familiar with the substance of the proposed rule, shall preside at the oral

proceeding on a proposed rule. If the authority does not preside, the presiding officer shall prepare a memorandum for consideration by the authority summarizing the contents of the presentations made at the oral proceeding unless the authority determines that such a memorandum is unnecessary because the authority will personally listen to or read the entire transcript of the oral proceeding.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the authority at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the authority decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the authority.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other 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.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**17.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the authority may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**17.5(5) Accessibility.** The authority shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16), telephone number (515)725-4900, in advance to arrange access or other needed services.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

### **265—17.6(17A) Regulatory analysis.**

**17.6(1) Definition of small business.** A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**17.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the authority’s small business impact list by making a written application to the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). The application for registration shall state:

- a. The name of the small business or organization of small businesses;

- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The authority may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The authority may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**17.6(3) *Time of mailing.*** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the authority shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the authority shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**17.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The authority shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

**17.6(5) *Qualified requesters for regulatory analysis—business impact.*** The authority shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- 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.

**17.6(6) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis the authority shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**17.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the authority. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**17.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

**17.6(9) *Publication of a concise summary.*** The authority shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**17.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**17.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small

business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).  
[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—17.7(17A,25B) Fiscal impact statement.**

**17.7(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 must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**17.7(2)** If the authority determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the authority shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**265—17.8(17A) Time and manner of rule adoption.**

**17.8(1)** *Time of adoption.* The authority shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the authority shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**17.8(2)** *Consideration of public comment.* Before the adoption of a rule, the authority shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis, or fiscal impact statement issued in that rule-making proceeding.

**17.8(3)** *Reliance on authority expertise.* Except as otherwise provided by law, the authority may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**265—17.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**17.9(1)** The authority 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.

**17.9(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 authority 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.

**17.9(3)** The authority shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the authority finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

**17.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the authority to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**265—17.10(17A) Exemptions from public rule-making procedures.**

**17.10(1)** *Omission of notice and comment.* To the extent the authority 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, the authority 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 authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**17.10(2)** *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

- a. Emergency housing assistance in the event of a disaster.
- b. Conduit financing to aid victims of a disaster.

**17.10(3)** *Public proceedings on rules adopted without them.* The authority may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 17.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the authority shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 17.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the authority may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 17.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**265—17.11(17A) Concise statement of reasons.**

**17.11(1)** *General.* 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 authority shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**17.11(2)** *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the authority's reasons for overruling the arguments made against the rule.

**17.11(3)** *Time of issuance.* After a proper request, the authority shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—17.12(17A) Contents, style, and form of rule.**

**17.12(1)** *Contents.* Each rule adopted by the authority shall contain the text of the rule and, in addition:

- a. The date the authority adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or if the authority in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the authority in its discretion decides to include such reasons; and

g. The effective date of the rule.

**17.12(2) *Incorporation by reference.*** The authority may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the authority finds that the incorporation of its text in the authority proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the authority proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The authority may incorporate such matter by reference in a proposed or adopted rule only if the authority makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this authority, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The authority shall retain permanently a copy of any materials incorporated by reference in a rule of the authority.

If the authority adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**17.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the authority shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the authority. The authority will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the authority shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**17.12(4) *Style and form.*** In preparing its rules, the authority shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

#### **265—17.13(17A) Authority rule-making record.**

**17.13(1) *Requirement.*** The authority 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 must be available for public inspection.

**17.13(2) *Contents.*** The authority 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 and any file-stamped copies of authority submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;
- b. Copies of any portions of the authority's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
- c. All written petitions, requests, and submissions received by the authority, 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 authority and considered by the authority, 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 authority 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 authority shall identify in the record the particular materials deleted and state the reasons for that deletion;
- d. 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;
- e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;
- f. A copy of the rule and any concise statement of reasons prepared for that rule;
- g. All petitions for amendment or repeal or suspension of the rule;
- h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;
- i. 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(4), and any authority response to that objection;
- j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and
- k. A copy of any executive order concerning the rule.

**17.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the authority rule-making record required by this rule need not constitute the exclusive basis for authority action on that rule.

**17.13(4) *Maintenance of record.*** The authority 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, the date of the Notice of Intended Action, or the date of any written criticism as described in 17.13(2) "g," "h," "i," or "j."

**265—17.14(17A) *Filing of rules.*** The authority shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the authority shall use the standard form prescribed by the administrative rules coordinator.

**265—17.15(17A) *Effectiveness of rules prior to publication.***

**17.15(1) *Grounds.*** The authority 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 authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**17.15(2) *Special notice.*** When the authority makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the authority 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 authority 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 authority 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. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication, in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 17.15(2).

#### **265—17.16(17A) General statements of policy.**

**17.16(1) *Compilation, indexing, public inspection.*** The authority shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**17.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this subsection shall not be relied on by the authority to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 17.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

#### **265—17.17(17A) Review by authority of rules.**

**17.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the authority to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the authority shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The authority may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**17.17(2)** In conducting the formal review, the authority shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the authority’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the authority or granted by the authority. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the authority’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 18  
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

**265—18.1(17A,16) Definitions.** The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“*Authority*” means the Iowa finance authority whose powers are exercised by a board of nine members appointed by the governor pursuant to Iowa Code section 16.2.

“*Executive director*” means the executive director of the authority appointed by the governor pursuant to Iowa Code section 16.6, or the executive director’s designee.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, trust, partnership or association, or any legal entity.

“*Waiver*” or “*variance*” means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person.

**265—18.2(17A,16) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the authority in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**265—18.3(17A,16) Applicability of chapter.** The authority may grant a waiver from a rule only if the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The authority may not waive requirements created or duties imposed by statute.

**265—18.4(17A,16) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 265—18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
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
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.

In determining whether a waiver or variance should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.

**265—18.5(17A,16) Filing of petition.** A petition for a waiver must be submitted in writing to the authority as follows:

**18.5(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. A copy of the request shall also be served on all parties to the contested case proceeding.

**18.5(2) Other.** If the petition does not relate to a pending contested case, the petition may be submitted to the attention of the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16).

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—18.6(17A,16) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

1. The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 265—18.4(17A,16). 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.
5. A history of any prior contacts between the authority and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
6. Any information known to the requester regarding the authority's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person who would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

**265—18.7(17A,16) Additional information.** Prior to issuing an order granting or denying a waiver, the executive director 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 executive director may schedule a telephonic or in-person meeting between the petitioner and the authority's executive director, or authority staff.

**265—18.8(17A,16) Notice.** The executive director shall acknowledge a petition upon receipt. The executive director shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the executive director may give notice to other persons. To accomplish this notice provision, the executive director may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the executive director attesting that notice has been provided.

**265—18.9(17A,16) Hearing procedures.** The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. These provisions shall otherwise apply to agency proceedings for a waiver only when the authority so provides by rule or order or is required to do so by statute.

**265—18.10(17A,16) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include 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.

**18.10(1) Executive director review.** The executive director may take up to 60 days to fully investigate and review the petition and, at the next board meeting thereafter, may present to the authority a suggested order based upon the executive director's investigation and review. The authority shall adopt, amend,

or reject the suggested order. If the suggested order is rejected, the authority shall instruct the executive director to prepare an alternative order to be considered at a subsequent board meeting.

**18.10(2) Authority discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority upon consideration of all relevant factors. The authority shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

**18.10(3) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.

**18.10(4) Narrowly tailored exception.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**18.10(5) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**18.10(6) Conditions.** The authority may place any condition on a waiver that the authority finds desirable to protect the public health, safety, and welfare.

**18.10(7) 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 authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

**18.10(8) Time for ruling.** The authority shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**18.10(9) When deemed denied.** Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority. However, the authority shall remain responsible for issuing an order denying a waiver.

**18.10(10) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**265—18.11(17A,16) 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. Some petitions or orders may contain information the authority is authorized or required to keep confidential. The authority may accordingly redact confidential information from petitions or orders prior to public inspection.

**265—18.12(17A,16) Summary reports.** The authority shall semiannually prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**265—18.13(17A,16) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority issues an order finding any of the following:

1. That 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

2. That 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
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

**265—18.14(17A,16) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**265—18.15(17A,16) Defense.** After the authority issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**265—18.16(17A,16) Judicial review.** Granting or denying a waiver petition is final agency action under Iowa Code chapter 17A. Any petition for judicial review by the district court shall be filed within 30 days of the issuance of the order in response to the petition unless a different time is provided by rule or statute.

These rules are intended to implement Iowa Code section 17A.9A and chapter 16.

[Filed 6/8/01, Notice 4/4/01—published 6/27/01, effective 8/1/01]

[Filed 12/11/07, Notice 10/24/07—published 1/2/08, effective 2/6/08]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

Exhibit A

Sample Petition for Waiver/Variance

BEFORE THE IOWA FINANCE AUTHORITY

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).



PETITION FOR WAIVER

A petition for waiver or variance from a rule adopted by the authority shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver or variance) name, address, and telephone number.
b. Describe and cite the specific rule from which a waiver or variance is requested.
c. Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.
d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
e. Provide a history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
f. Provide information known to the petitioner regarding the treatment by the authority of similar cases.
g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
h. Provide the name, address, and telephone number of any person that would be adversely affected or disadvantaged by the granting of the waiver or variance.
i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

- 1. The petitioner has the burden of proving to the authority, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The executive director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the attention of the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

CHAPTER 22  
IOWA AFTERCARE SERVICES RENT SUBSIDY PROGRAM

**265—22.1(16,PL106-169) Purpose.** Through the Iowa aftercare services rent subsidy program (program), the authority, working with the department of human services, seeks to assist youth who are participating in the department of human services' program of aftercare services for former foster care recipients. The program also includes a transitional apartment subsidy for agencies that provide housing and life skills training for these youth.

**265—22.2(16,PL106-169) Definitions.**

*"Aftercare services"* means activities established in an individualized service plan developed with a self-sufficiency advocate which complement the youth's own efforts in achieving self-sufficiency, such as linking to appropriate community resources and having a safe and stable place to live.

*"Authority"* means the Iowa finance authority.

*"Organization"* means a contractor or subcontractor of the department of human services' program of aftercare services.

*"Rental unit"* means an apartment, mobile home, or private room for which a signed, written lease exists and which is governed by Iowa Code chapter 562A.

*"Self-sufficiency advocate"* means an employee of the organization, designated by the organization as a case manager to assist youth.

*"Transitional apartment"* means a rental unit, rented by the organization to the youth and used to provide housing and life skills training required to assist the youth to recognize and accept the personal responsibility related to being a renter.

*"Youth"* means a person at least 18 but not yet 21 years of age who has left foster care on or after the person's eighteenth birthday, and who is participating in the program of aftercare services.

**265—22.3(16,PL106-169) Eligibility requirements for direct rent subsidy.** All of the following criteria shall be met.

**22.3(1) *Aftercare services participant.*** The youth shall be an active participant in aftercare services, making progress toward an identified goal of obtaining or maintaining stable housing.

**22.3(2) *Demonstrated need.*** To demonstrate need, the youth must provide evidence that the youth is responsible for paying more than 30 percent of the youth's gross earned and unearned income for rent and that the youth cannot obtain other rental assistance because the youth has been determined ineligible or is on a waiting list for rent subsidy under the U.S. Department of Housing and Urban Development (HUD) or any other available rent subsidy program or because a waiting list for the HUD rent subsidy program or any other rent subsidy program is closed. This program may not be used to substitute for any other subsidy that the youth had been receiving at the time of or immediately prior to the time of application to this program. Youth receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible.

**22.3(3) *Education on renter rights and responsibilities.*** To demonstrate that the youth understands the rights and responsibilities of being a renter, the youth must have either lived in a transitional apartment, completed a renter education and awareness program, be enrolled to participate or be currently participating in a renter education and awareness program.

**22.3(4) *Budget.*** The youth must submit a budget that demonstrates that the subsidy, when combined with the youth's gross earned and unearned income, will enable the youth to cover all remaining living expenses (i.e., housing, utilities, clothing, and food).

**265—22.4(16,PL106-169) Application for direct rent subsidy.** Applications for the program may be obtained on the authority's website at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov) or by contacting the authority at the address set forth in 265—Chapter 1.

**22.4(1) Application process.** The application for aftercare rent subsidy and a monthly budget form must be completed, verified by the self-sufficiency advocate and submitted to the authority by the youth's self-sufficiency advocate. The application and referenced forms will require the following information:

- a. The youth's estimated monthly gross earned and unearned income for the 12 months following application.
- b. Written evidence from sources of local rental assistance available in the youth's community that the youth has applied for that rental assistance and that the youth has been determined ineligible or placed on a waiting list for that rental assistance, or that the waiting list is closed.
- c. The amount of the total rent for the rental unit.
- d. Number of bedrooms in the rental unit.
- e. Names of the people who are on, or will be on, the lease.
- f. Number of the youth's minor dependents.
- g. Evidence that the youth has lived in a transitional apartment, completed a renter education and awareness program, or is enrolled to participate or is currently participating in a renter education and awareness program.
- h. Date of the youth's birth.

**22.4(2) Date of application.** The date of the application shall be the date the completed application is received by the authority. Any applications received after a monthly payment calculation will not receive a subsidy payment until the next succeeding payment cycle after approval of the application. No back payment for rent will be paid.

**22.4(3) Payment determination.** The self-sufficiency advocate shall be notified by the authority on or about the date that the authority calculates the payment for that month as to whether the youth's application has been approved.

**22.4(4) Waiting list.** After funds available for this program are committed, the authority shall deny pending applications.

a. Youth not awarded funding who meet the eligibility requirements shall be placed on a statewide waiting list according to the order in which the completed applications were received by the authority. In the event that more than one application is received at one time, the youth shall be entered on the waiting list on the basis of the day of the youth's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, with January being month one.

b. The self-sufficiency advocate shall be notified of the waiting list decision on or about the date that the authority calculates the payment for that month. The notice shall state that the youth meets eligibility requirements but no funds are available and that the youth shall be placed on the waiting list.

c. When funding allows additional youth to be added to the program, they shall be taken from the statewide waiting list, and their eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to the self-sufficiency advocate for completion, with such application to be returned to the authority within time lines specified by the authority. If the signed application and verification of continuing eligibility are not received by the time line specified by the authority, the youth's name shall be dropped from consideration for receipt of the rent subsidy payment.

#### **265—22.5(16,PL106-169) Amount of rent subsidy.**

**22.5(1) Use of subsidy.** Assistance shall be used for rental expense directly related to the youth's lease of a rental unit. The monthly payment shall be for a rental unit with one bedroom or a proportionate share of rental costs in units containing more than one bedroom. An exception for additional bedrooms will be made for minor dependents residing in the rental unit.

**22.5(2) Subsidy amount.** The subsidy amount is the difference, not to exceed \$350, between:

- a. The lesser of the actual rent or fair market rent under guidelines of the applicable HUD low-rent housing program in the county where the youth's residence is located, and
- b. Thirty percent of the youth's monthly gross earned and unearned income.

**22.5(3) Monthly payment.** So long as funds remain and eligibility requirements of this chapter continue to be met, the organization shall receive an ongoing monthly payment on behalf of the youth

approved for rent subsidy. The monthly payment will equal the amount determined pursuant to subrule 22.5(2).

**265—22.6(16,PL106-169) Redetermination of direct rent subsidy eligibility.**

**22.6(1) *Time of completion.*** A redetermination of eligibility for direct rent subsidy payments shall be completed:

- a. At least once every 12 months.
- b. When a change in circumstances occurs that affects eligibility requirements of rule 265—22.3(16,PL106-169).
- c. If the youth moves from the rental unit stated on the application.
- d. When there is a change in income.
- e. When there is a change in the names of the people on the lease or number of minor dependents.
- f. When there is an unapproved person residing in the rental unit.
- g. If the youth fails to complete the renter education and awareness program within the time period stated in the application.

**22.6(2) *Review packet.*** The authority shall send a review packet, which shall include instructions and necessary forms for verification of continuing eligibility, to the youth's self-sufficiency advocate at least 60 calendar days before the deadline date for annual redetermination of eligibility.

- a. The self-sufficiency advocate shall submit the completed forms to the authority.
- b. If the authority does not receive the completed forms verifying continued eligibility by the stated deadline, the youth's subsidy shall be terminated.

**265—22.7(16,PL106-169) Termination of rent subsidy payments.**

**22.7(1) *Reasons for termination.*** The rent subsidy shall terminate at the end of the month in which any of the following occurs, and a notice shall be sent to the self-sufficiency advocate which states the reason for the termination:

- a. The youth does not meet one or more of the eligibility criteria listed in rule 265—22.3(16,PL106-169).
- b. The youth does not meet the youth's obligations and personal responsibility as a renter, as determined by the youth's self-sufficiency advocate.
- c. No additional uncommitted funds are available for the rent subsidy program.

**22.7(2) *Reporting of changes.*** The youth is required to report to the youth's self-sufficiency advocate within ten calendar days any changes which may affect eligibility. Failure to do so may result in termination of the subsidy. The self-sufficiency advocate shall inform the authority of changes upon the advocate's discovery of such information.

**22.7(3) *Insufficient funding.*** If funds are not sufficient to cover payments for all youth on the subsidy, youth shall be terminated from the subsidy in the inverse order in which they began receiving payments, i.e., the last youth to be added to the subsidy being the first youth to be removed. The youth terminated shall move back to the waiting list with the original application date dictating the youth's position on the waiting list, as stated in subrule 22.4(4).

**265—22.8(16,PL106-169) Eligibility requirements for transitional apartment subsidy.** All of the following criteria shall be met:

**22.8(1)** The participating organization shall be a contractor or subcontractor of the department of human services' program of aftercare services.

**22.8(2)** The organization shall submit a statement to the authority that the transitional apartment will be used to provide housing and life skills training to assist youth to recognize and accept their personal responsibility related to being a renter.

**22.8(3)** The organization will lease or sublease the apartment to qualified aftercare services participants who have left foster care on or after their eighteenth birthday.

**265—22.9(16,PL106-169) Application for transitional apartment subsidy.** Applications for the transitional apartment subsidy may be obtained on the authority's website or by contacting the authority at the address set forth in 265—Chapter 1. The organization shall submit the completed aftercare transitional apartment application, which must include a written narrative of the plan specified in subrule 22.8(2).

**265—22.10(16,PL106-169) Amount of transitional apartment subsidy.** The amount of transitional apartment subsidy is based on the lesser of the actual rent or 100 percent of the fair market rent under guidelines of the applicable HUD low-rent housing program in the county where the rental unit is located.

**265—22.11(16,PL106-169) Redetermination of transitional apartment subsidy eligibility.** A redetermination of eligibility for transitional apartment subsidy payments shall be completed:

1. At least once every 12 months.
2. When a change in circumstances occurs that affects eligibility requirements of rule 265—22.8(16,PL106-169).

**265—22.12(16,PL106-169) Termination of transitional apartment subsidy payments.**

**22.12(1) Reasons for termination.** The rent subsidy shall terminate at the end of the month in which any of the following occurs, and a notice shall be sent to the participating organization which states the reason for the termination:

- a. The organization no longer meets the eligibility criteria listed in rule 265—22.8(16,PL106-169).
- b. No additional unobligated funds are available for the transitional apartment subsidy program.

**22.12(2) Reporting of changes.** The organization shall report to the authority any changes which may affect eligibility. Failure to do so may result in termination of the subsidy.

**265—22.13(16,PL106-169) Fraudulent practices relating to the aftercare rent subsidy program.** If a youth, self-sufficiency advocate, or organization knowingly makes or causes to be made a false statement or representation or knowingly fails to report to the authority any change in circumstances affecting the youth's or organization's eligibility for financial assistance under this chapter, the authority may require repayment of the amount that was paid to or on behalf of the youth or organization while the youth or organization was ineligible, as a condition of continued participation in the program.

**265—22.14(16,PL106-169) Appeals.**

**22.14(1)** An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa finance authority at the address set forth in rule 265—1.3(16). The notice of appeal must actually be received at that address within the time frame specified in order to be considered timely.

**22.14(2)** The notice of appeal shall state the grounds upon which the applicant challenges the decision.

**22.14(3)** An appeal shall be heard by the executive director of the Iowa finance authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.

**22.14(4)** Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of directors of the authority.

**22.14(5)** If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the authority's board a proper remedy.

**22.14(6)** Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.

**22.14(7) Judicial review.** Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

[ARC 4319C, IAB 2/27/19, effective 4/3/19]

These rules are intended to implement Iowa Code sections 16.5(5), 16.5(10), 16.5(13), 16.5(17), and 16.15(7) and Public Law 106-169, Section 101 (Improved Independent Living Program).

[Filed 2/10/05, Notice 12/22/04—published 3/2/05, effective 4/6/05]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]



CHAPTER 30  
QUALIFIED MIDWESTERN DISASTER AREA BOND ALLOCATION

**265—30.1(16) General.** The governor has appointed the executive director of the Iowa finance authority as the governor’s designee responsible for administration of the law which establishes procedures for allocating the authority to issue up to a specified amount of qualified midwestern disaster area (“MDA”) bonds as defined in Section 1400N of the Internal Revenue Code, as amended by the Heartland Disaster Tax Relief Act (“Act”) of 2008. The Act was passed in response to the disasters attributable to the severe storms, tornadoes, and flooding that gave rise to any of the presidential declarations of a major disaster on or after May 20, 2008, and before August 1, 2008, under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and that were determined by the President to warrant individual or individual and public assistance from the federal government under such Act with respect to damages attributable to such severe storms, tornadoes, or flooding (collectively, “disasters”). The Act limits the aggregate face amount of bonds that may be designated as MDA bonds. The role of the governor’s designee is to allocate on behalf of particular projects authorization to issue specified allotments of MDA bonds from the total aggregate face amount permitted under the Act. The authority to issue up to a specified face amount of MDA bonds, as allocated to a particular project pursuant to this chapter, may be referred to herein as an “allotment.” Procedures set out in the Act and in these rules shall be followed in allocating allotments for the various purposes authorized by the Act. The allotments shall be allocated among all eligible applicants for those various purposes in accordance with the Act, Executive Order Number 9, and these rules.

[ARC 7703B, IAB 4/8/09, effective 5/13/09]

**265—30.2(16) Forms.** Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa finance authority at the address set forth in rule 265—1.3(16). The telephone number of the authority is (515)725-4900. Information and forms are also available at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov).

[ARC 7703B, IAB 4/8/09, effective 5/13/09; ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—30.3(16) Eligibility for allocation.**

**30.3(1)** In the case of a project involving a private business use (as defined in Section 141(b)(6) of the Internal Revenue Code), to be eligible for an allotment, the applicant must certify that the entity using the property either:

- a. Suffered a loss in a trade or business attributable to the disasters; or
- b. Is a person replacing a trade or business with respect to which another person suffered such a loss.

**30.3(2)** In the case of a project relating to public utility property (as defined in Section 168(i)(10) of the Internal Revenue Code), to be eligible for an allotment, the applicant must certify that the project involves repair or reconstruction of public utility property damaged by the disasters.

**30.3(3)** For a project to be eligible for an allotment as a qualified mortgage issue, the applicant must certify that 95 percent or more of the net proceeds (as defined in Section 150(a)(3) of the Internal Revenue Code) of the issue are to be used to provide financing for mortgagors who suffered damages to their principal residences attributable to the disasters.

[ARC 7703B, IAB 4/8/09, effective 5/13/09; ARC 8548B, IAB 2/24/10, effective 2/4/10; ARC 8724B, IAB 5/5/10, effective 6/9/10]

**265—30.4(16) Allocation limit and Iowa department of economic development set-aside.**

**30.4(1)** Per-applicant cap; set-aside.

a. Through December 31, 2011, allotments shall be limited to not more than \$200 million per applicant, with any related party, as defined under Section 267 of the Internal Revenue Code, being included within the meaning of applicant for the application of subrule 30.4(1). This limitation shall not apply to any project recommended by the Iowa department of economic development.

b. Through December 31, 2011, an amount of \$300 million shall be set aside and made available to applicants selected by the Iowa department of economic development. The director of the Iowa

department of economic development shall notify the authority in writing of the name of each applicant that is to receive an allotment under subrule 30.4(1) and the amount allotted to each applicant. Promptly upon receipt of this written notice, the authority shall award the designated allotment to said applicant.

c. Following December 31, 2011, all unallocated allotments under paragraph 30.4(1) “b” shall be available to all eligible projects. Following December 31, 2011, the per-applicant cap set forth in paragraph 30.4(1) “a” shall not apply.

**30.4(2)** Subject to subrule 30.4(1) above, allotments shall be allocated among eligible applications on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor’s designee.

**30.4(3)** All applications that are received by the governor’s designee on or prior to December 22, 2008, pursuant to the provisions of rule 265—30.5(16) shall be considered simultaneously received at the opening of business on December 22, 2008, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allotments requested in all of the applications received for projects located in a particular county exceeds the total amount that may be allocated for such county, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 30.4(4).

**30.4(4)** In order to determine the order of allocation of the allotments to two or more applications that are simultaneously received pursuant to subrule 30.4(3) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the Iowa finance authority offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority’s staff. The application that corresponds to the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application that corresponds to the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**30.4(5)** The governor’s designee shall maintain a list of applications for MDA bonds. Any applications that are deemed to be simultaneously received shall be listed in the order of preferences established pursuant to subrule 30.4(4). Applications received after December 22, 2008, shall be added to the appropriate list depending upon the subject of the application in the chronological order received. [ARC 7703B, IAB 4/8/09, effective 5/13/09; ARC 8548B, IAB 2/24/10, effective 2/4/10; ARC 8724B, IAB 5/5/10, effective 6/9/10]

#### **265—30.5(16) Application for allocation.**

**30.5(1)** An applicant must produce to the governor’s designee an inducement resolution adopted by a governmental entity authorized to issue bonds.

**30.5(2)** An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, must make an application by filing the form entitled “Application for Midwestern Disaster Area Bonds” available from the governor’s designee for the allocation of an allotment.

**30.5(3)** Applications may be submitted to the Iowa finance authority offices at any time. All applications received on or prior to December 22, 2008, will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day immediately following December 22, 2008.

[ARC 7703B, IAB 4/8/09, effective 5/13/09]

**265—30.6(16) Certification of allocation.** Upon receipt of a completed application, the governor’s designee shall promptly certify to the applicant the amount of the allotment allocated to the project for

which the application was submitted. Subject to subrule 30.4(1), the governor's designee shall continue to allocate allotments for eligible projects until the allotments allocated equal the maximum aggregate face amount that may be designated as MDA bonds under the Act or until there are no more applications, whichever occurs first. If the remaining allotment capacity is not sufficient to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, an allotment shall be offered to the next application on the list under the same conditions. If the partial allocation is accepted, the applicant shall submit a new application for an additional allotment and that application will be added to the bottom of the list in the chronological order of its receipt. If the bonds are issued and delivered prior to the expiration date of the allocation, then the applicant or the applicant's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds."

[ARC 7703B, IAB 4/8/09, effective 5/13/09; ARC 8548B, IAB 2/24/10, effective 2/4/10; ARC 8724B, IAB 5/5/10, effective 6/9/10]

**265—30.7(16) Expiration of allocations.** An allocation of an allotment pursuant to this chapter shall remain valid for 150 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the governor's designee to be reallocated, if possible; provided, however, that if the 150th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day. All MDA bonds must be issued prior to January 1, 2013.

[ARC 7703B, IAB 4/8/09, effective 5/13/09]

**265—30.8(16) Resubmission of expired allocations.** If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.

[ARC 7703B, IAB 4/8/09, effective 5/13/09]

**265—30.9(16) Application and allocation fees.** The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the qualified MDA bond allotments in accordance with these rules.

[ARC 7703B, IAB 4/8/09, effective 5/13/09]

These rules are intended to implement Iowa Code section 16.5(1)"r," the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

[Filed emergency 12/22/08—published 1/14/09, effective 12/22/08]

[Filed ARC 7703B (Notice ARC 7512B, IAB 1/14/09), IAB 4/8/09, effective 5/13/09]

[Filed Emergency ARC 8548B, IAB 2/24/10, effective 2/4/10]

[Filed ARC 8724B (Notice ARC 8549B, IAB 2/24/10), IAB 5/5/10, effective 6/9/10]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]



CHAPTER 31  
COUNCIL ON HOMELESSNESS

**265—31.1(16) Organization.**

**31.1(1) Location.** The main office of the council is located at the offices of the Iowa finance authority, located at the address set forth in rule 265—1.3(16). Office hours for the council shall be 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Written requests may be submitted to the council at this address. Information about the council is available at this website address: [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov). The council's telephone numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

**31.1(2) Council members and staff.** The powers of the council are vested in and exercised by 38 voting members appointed by the governor in accordance with Iowa Code section 16.2D. The 26 voting members selected from the general public shall each serve a two-year term. Terms shall be staggered so half of the voting members are appointed in one year and half are appointed in the year thereafter. Initially, the council shall, as soon as all members have been appointed, promptly elect a chairperson and a vice chairperson, both to a term not to exceed two years ending in May. The chairperson and vice chairperson shall not both be either general public members or agency director members. Thereafter, the chairperson and vice chairperson positions shall rotate between agency director members and general public members so that the chairperson and vice chairperson shall not both be either general public members or agency director members at the same time. Staff assistance and administrative support shall be provided by the Iowa finance authority as approved by the executive director.

**31.1(3) Council action.** A majority of the members of the council shall constitute a quorum. Any action taken by the council must be adopted by an affirmative vote of a majority of its membership.

**31.1(4) Meetings.** Regular meetings of the council shall be held on the third Friday of the following months: January, March, May, July, September, and November, unless another time of meeting is designated by the council. Meetings may also be held at the call of the chairperson or whenever a majority of the members so request. The council shall comply with the requirements of Iowa Code chapters 21 and 22. Interested parties are encouraged to attend and participate in council meetings where feasible.

**31.1(5) Committees.** The council shall form an executive committee consisting of the council's chairperson, vice chairperson, and seven members, one of whom shall be the immediate past chairperson if a current member of the council. The chairperson shall appoint the remaining members of the executive committee. The executive committee shall be responsible for reviewing and making recommendations for amendments or changes to the internal rules of procedure. The executive committee shall carry out the business of the council between regularly scheduled council meetings. A majority of the members of the executive committee shall constitute a quorum. Any action taken by the executive committee must be adopted by an affirmative vote of a majority of its members.

*a. Nominating committee.* The nominating committee shall initially consist of all 12 agency director members. Following the initial appointment of the general public members to the council, the council shall annually at its March meeting elect six members, three of whom shall be agency director members and three of whom shall be general public members. The chairperson of the council shall also be a voting member. The nominating committee shall nominate persons to the governor to fill the general public member positions when they become open. A majority of the members of the nominating committee shall constitute a quorum. Any action taken by the nominating committee must be adopted by an affirmative vote of a majority of its members.

*b. Other committees.* Other committees may be assembled by the executive committee to carry out various responsibilities of the council. A majority of the members of such a committee shall constitute a quorum. Any action taken by a committee must be adopted by an affirmative vote of a majority of its members.

*c. Informal working groups.* Informal working groups may be assembled from time to time by the chairperson for various tasks.

[ARC 7704B, IAB 4/8/09, effective 5/13/09; ARC 2005C, IAB 5/27/15, effective 7/1/15; ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—31.2(16) Duties of the council.** The duties of the council shall be to:

1. Develop a process for evaluating state policies, programs, statutes, and rules to determine whether any state policies, programs, statutes, or rules should be revised to help prevent and alleviate homelessness.
2. Evaluate whether state agency resources could be more efficiently coordinated with other state agencies to prevent and alleviate homelessness.
3. Work to develop a coordinated and seamless service delivery system to prevent and alleviate homelessness.
4. Use existing resources to identify and prioritize efforts to prevent persons from becoming homeless and to eliminate factors that keep people homeless.
5. Identify and use federal and other funding opportunities to address and reduce homelessness within the state.
6. Work to identify causes and effects of homelessness and increase awareness among policymakers and the general public.
7. Advise the governor's office, the Iowa finance authority, state agencies, and private organizations on strategies to prevent and eliminate homelessness.
8. Make annual recommendations to the governor regarding matters which impact homelessness on or before September 15.
9. Prepare and file with the governor and the general assembly on or before the first day of December in each odd-numbered year a report on homelessness in Iowa.
10. Assist in the completion of the state's continuum of care application to the U.S. Department of Housing and Urban Development.

[ARC 7704B, IAB 4/8/09, effective 5/13/09]

These rules are intended to implement Iowa Code sections 16.5(1) "r" and 16.2D.

[Filed emergency 12/22/08—published 1/14/09, effective 12/22/08]

[Filed ARC 7704B (Notice ARC 7514B, IAB 1/14/09), IAB 4/8/09, effective 5/13/09]

[Filed ARC 2005C (Notice ARC 1864C, IAB 2/4/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

CHAPTER 37  
RECOVERY ZONE BOND ALLOCATION

**265—37.1(16) General.** The American Recovery and Reinvestment Act of 2009 created two types of recovery zone (“RZ”) bonds: recovery zone economic development (“RZED”) bonds and recovery zone facility (“RZ facility”) bonds. The applicable provisions are codified in Sections 1400U-1 – 1400U-3 of the Internal Revenue Code of 1986, as amended. The law provides that eligible issuers in Iowa may issue up to \$90 million of RZED bonds and up to \$135 million of RZ facility bonds. Through Notice 2009-50, the Internal Revenue Service published the applicable RZ bond allocations for Iowa, which amounts are included as Exhibit A to this chapter.

Pursuant to 2010 Iowa Acts, House File 2487 (the “Act”), the Iowa finance authority (“authority”) has been charged with tracking the issuance of RZ bonds and making certain allocations of RZ bonding authority to ensure maximum use of this resource in the state.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.2(16) Forms.** Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa finance authority at the address set forth in rule 265—1.3(16). The telephone number of the authority is (515)725-4900. Information and forms are also available at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov).

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10; ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—37.3(16) Notice from the authority to issuers.** The authority will provide written notice to each county and to each large municipality (defined as a city with a population exceeding 100,000) of the amount of RZ bonding authority that has been allocated to it by the Internal Revenue Service. This written notice will include information about waiving such authority, pursuant to rule 265—37.5(16), as well as notification of the requirement that issuers provide written notice to the authority of any issuance of RZ bonds.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.4(16) Notice from issuers to the authority.** Within five business days of the issuance thereof (or within five business days of its receipt of the authority letter issued under rule 265—37.3(16), for those issuers that have issued RZ bonds prior to April 12, 2010), each county or large municipality that issues RZED bonds or RZ facility bonds (or that allocates RZ bond authority to a local issuer) shall give the authority written notice, on a form provided by the authority, detailing the amount and type of RZ bonds that were issued.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.5(16) Waiver of RZ bonding authority.**

**37.5(1)** A county or large municipality that has received an allocation of RZ bonds may, prior to July 1, 2010, voluntarily waive all or part of such allocation to the authority by completing the applicable RZ bond waiver form provided by the authority.

**37.5(2)** As provided in the Act, any portion of a county or large municipality’s RZ bond allocation that has not been used by July 1, 2010, is deemed waived, and such amount will be subject to reallocation by the authority pursuant to rule 265—37.7(16). The authority will consider an allocation (or a portion thereof) used if the issuer for such allocation has taken substantive action toward issuance of the applicable RZ bonds. “Substantive action” includes, but is not limited to, (a) the adoption of resolutions or ordinances authorizing the sale or issuance of bonds, or (b) the completion of procedures, such as public hearings, referenda or related petition periods, to vest authority for the issuance of bonds.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.6(16) Application for allocation of recaptured or waived RZ bond authority.**

**37.6(1)** An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, requesting an allocation must make an application by filing the form entitled “Application for Recovery

Zone Bonds” available from the authority. Such applicant must possess the ability to issue RZ bonds under state and federal law.

**37.6(2)** As part of its application, the applicant must include a copy of the resolution or other official action designating the recovery zone for which the application is being made.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.7(16) Allocations.**

**37.7(1)** The authority will track the amount and type of RZ bonds issued and the amount of RZ bonding authority available to be allocated.

**37.7(2)** Allocations will only be made for eligible projects in those counties that received an allocation of authority to issue RZ bonds pursuant to IRS Notice 2009-50. While the allocations will be limited to projects within those counties that originally received an allocation, the amount of the allocation from the authority will not be limited to the original allocated amounts under Notice 2009-50.

**37.7(3)** Allocations shall be made to eligible applicants on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the authority.

**37.7(4)** All applications that are received by the authority on or prior to April 12, 2010, pursuant to the provisions of rule 265—37.6(16) shall be considered simultaneously received at the opening of business on April 12, 2010, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allocations requested in all of the applications received on such date exceeds the total amount determined by the authority as available to be allocated, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 37.7(5).

**37.7(5)** In order to determine the order of allocation to two or more applications that are simultaneously received pursuant to subrule 37.7(4) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the authority’s offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall also be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority’s staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**37.7(6)** Applications received after April 12, 2010, shall be added to the appropriate list (whether for RZED bonds or RZ facility bonds) depending upon the subject of the application in the chronological order received.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.8(16) Certification of allocation.** Upon receipt of a completed application and verification that sufficient RZ bonding authority exists for such application, the authority shall promptly certify to the applicant the amount of the RZED bond or RZ facility bond allocation, as applicable, awarded to the project for which the application was submitted. The authority shall continue to award allocations for eligible projects until the available recovery zone bonding authority is allocated. If the remaining capacity is not sufficient to fully fund an application which is next in order for allocation, the authority shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the authority of its decision to take the available allocation within five calendar days of receiving

notice of that option, an allotment shall be offered to the next application on the list under the same conditions.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.9(16) Expiration of allocations.** An allocation of recovery zone bonding authority pursuant to this chapter shall remain valid for 120 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the authority to be reallocated, if possible; provided, however, that if the 120th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.10(16) Resubmission of expired allocations.** If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

**265—37.11(16) Application and allocation fees.** The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the recovery zone bond allotments in accordance with these rules.

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

#### EXHIBIT A

	<b>Recovery Zone Economic Development Bonds</b>	<b>Recovery Zone Facility Bonds</b>
<b>Iowa's Total Allocation</b>	<b>\$90,000,000</b>	<b>\$135,000,000</b>
<b>Large Municipalities</b>		
Cedar Rapids	1,972,000	2,958,000
Des Moines	5,571,000	8,356,000
<b>Counties</b>		
Adair County	564,000	845,000
Adams County	0	0
Allamakee County	3,212,000	4,818,000
Appanoose County	0	0
Audubon County	382,000	574,000
Benton County	390,000	586,000
Black Hawk County	2,343,000	3,514,000
Boone County	0	0
Bremer County	447,000	670,000
Buchanan County	72,000	109,000
Buena Vista County	785,000	1,177,000
Butler County	411,000	616,000
Calhoun County	0	0
Carroll County	350,000	525,000
Cass County	0	0
Cedar County	0	0
Cerro Gordo County	0	0
Cherokee County	1,795,000	2,693,000

<b>Iowa's Total Allocation</b>	<b>Recovery Zone Economic Development Bonds \$90,000,000</b>	<b>Recovery Zone Facility Bonds \$135,000,000</b>
Chickasaw County	0	0
Clarke County	648,000	972,000
Clay County	0	0
Clayton County	0	0
Clinton County	0	0
Crawford County	0	0
Dallas County	1,731,000	2,596,000
Davis County	612,000	918,000
Decatur County	865,000	1,298,000
Delaware County	463,000	694,000
Des Moines County	3,550,000	5,325,000
Dickinson County	0	0
Dubuque County	4,363,000	6,545,000
Emmet County	0	0
Fayette County	1,115,000	1,672,000
Floyd County	2,500,000	3,749,000
Franklin County	1,220,000	1,829,000
Fremont County	821,000	1,232,000
Greene County	0	0
Grundy County	221,000	332,000
Guthrie County	306,000	459,000
Hamilton County	1,578,000	2,367,000
Hancock County	853,000	1,280,000
Hardin County	0	0
Harrison County	0	0
Henry County	1,409,000	2,113,000
Howard County	1,654,000	2,481,000
Humboldt County	1,320,000	1,980,000
Ida County	0	0
Iowa County	0	0
Jackson County	32,000	48,000
Jasper County	692,000	1,038,000
Jefferson County	1,163,000	1,745,000
Johnson County	0	0
Jones County	286,000	429,000
Keokuk County	403,000	604,000
Kossuth County	604,000	906,000
Lee County	2,793,000	4,190,000
Linn County	1,280,000	1,920,000
Louisa County	837,000	1,256,000
Lucas County	0	0
Lyon County	370,000	555,000
Madison County	435,000	652,000

<b>Iowa's Total Allocation</b>	<b>Recovery Zone Economic Development Bonds \$90,000,000</b>	<b>Recovery Zone Facility Bonds \$135,000,000</b>
Mahaska County	841,000	1,262,000
Marion County	857,000	1,286,000
Marshall County	2,431,000	3,647,000
Mills County	0	0
Mitchell County	962,000	1,443,000
Monona County	0	0
Monroe County	0	0
Montgomery County	588,000	882,000
Muscatine County	3,136,000	4,703,000
O'Brien County	149,000	223,000
Osceola County	0	0
Page County	2,274,000	3,411,000
Palo Alto County	547,000	821,000
Plymouth County	2,322,000	3,484,000
Pocahontas County	0	0
Polk County	6,992,000	10,487,000
Pottawattamie County	0	0
Poweshiek County	3,083,000	4,625,000
Ringgold County	246,000	368,000
Sac County	181,000	272,000
Scott County	0	0
Shelby County	0	0
Sioux County	946,000	1,419,000
Story County	0	0
Tama County	2,004,000	3,007,000
Taylor County	475,000	712,000
Union County	0	0
Van Buren County	125,000	187,000
Wapello County	910,000	1,365,000
Warren County	1,352,000	2,029,000
Washington County	0	0
Wayne County	0	0
Webster County	0	0
Winnebago County	1,304,000	1,956,000
Winneshiek County	4,090,000	6,134,000
Woodbury County	612,000	918,000
Worth County	0	0
Wright County	1,155,000	1,733,000

[ARC 8709B, IAB 5/5/10, effective 4/12/10; ARC 8962B, IAB 7/28/10, effective 9/1/10]

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2010 Iowa Acts, House File 2487.

[Filed Emergency ARC 8709B, IAB 5/5/10, effective 4/12/10]

[Filed ARC 8962B (Notice ARC 8710B, IAB 5/5/10), IAB 7/28/10, effective 9/1/10]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

CHAPTER 44  
IOWA AGRICULTURAL DEVELOPMENT DIVISION

**265—44.1(16) General.**

**44.1(1)** *Description of Iowa agricultural development division (IADD) board.* The IADD board consists of five members appointed by the governor. The executive director of the Iowa finance authority or the executive director's designee shall serve as an ex officio nonvoting member. Members are appointed for staggered six-year terms. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as the appointed members determine. The executive director of the authority may organize the division and employ necessary qualified personnel.

**44.1(2)** *General course and method of operations.* The IADD board generally meets on a monthly basis or at the call of the chairperson or whenever two appointed members so request. The purpose of the meetings shall be to review progress in implementation and administration of programs, to consider and act upon proposals for assistance, and take other actions as necessary and appropriate.

**44.1(3)** *Location where public may submit requests for assistance or obtain information.* Requests for assistance or information should be directed to the Iowa finance authority at the address set forth in rule 265—1.3(16); telephone (515)725-4900. Requests may be made personally, by telephone, U.S. mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2099C, IAB 5/27/15, effective 7/1/15; ARC 4319C, IAB 2/27/19, effective 4/3/19]

**265—44.2(16) Definitions.**

*“Act”* means Iowa Code chapter 16.

*“Agricultural asset”* means agricultural land, agricultural improvements, depreciable agricultural property, crops or livestock used for farming purposes.

*“Agricultural asset transfer agreement”* means any commonly accepted written agreement which specifies the terms of the transfer of operation of the agricultural asset. The agreement may be made on a cash basis or a commodity share basis.

*“Agricultural improvements”* means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

*“Agricultural land”* means land suitable for use in farming and which is or will be operated as a farm.

*“Application”* means a completed instrument on a form approved by IADD.

*“BFCF”* means beginning farmer custom farming tax credit program.

*“BFCF eligible applicant”* means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.81 and the provisions of these rules relating to recipient eligibility.

*“BFLP”* means beginning farmer loan program.

*“BFLP eligible applicant”* means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must also be a beginning farmer, as defined in Iowa Code section 16.75, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility.

*“BFTC”* means beginning farmer tax credit program.

*“BFTC eligible applicant”* means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.80 and the provisions of these rules relating to recipient eligibility.

*“Bond purchaser”* means any lender or any person, as defined in Iowa Code section 4.1(20), who purchases an authority bond under the individual agricultural development bond program.

“*Cash basis agreement*” means an agreement whereby operation of the agricultural asset is transferred via a fixed cash payment per annum.

“*Commodity share basis*” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production as payment for use of the agricultural asset.

“*Custom farming contract*” means any commonly accepted written contract which specifies the terms of the work to be performed by the beginning farmer for an Iowa landowner or tenant or livestock owner. The contract must provide for the production of crops or livestock located on agricultural land. The taxpayer will pay the BFCF eligible applicant on a cash basis, and the total amount paid for each tax year that the tax credit is claimed must equal at least \$1,000. The contract must be in writing for a term of not more than 24 months. A contract is not allowed if the taxpayer and BFCF eligible applicant are: persons who hold a legal or equitable interest in the same agricultural land or livestock; related family members, such as spouse, child, stepchild, brother, or sister; or partners in the same partnership which holds a legal or equitable interest.

“*Farm*” means a farming enterprise which is generally recognized as a farm rather than a rural residence.

“*Farming*” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority.

“*IADD*” means the Iowa agricultural development division of the Iowa finance authority.

“*Lender*” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

“*Low-income farmer*” means a farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.

“*LPP*” means loan participation program.

“*LPP eligible applicant*” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must be a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan and who satisfies all of the criteria contained in the Act and the provisions of these rules relating to recipient eligibility.

“*LPP loan*” means the “last-in/last-out” loan participation requested by the lender from the authority.

“*Maximum allowable net worth*” for calendar year 2013 is \$691,172. The maximum allowable net worth for each calendar year shall be increased or decreased as of January 1 of such calendar year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year.

“*Net worth*” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

“*Participated loan*” means a loan, any portion of which is participated to the authority by the lender.

“*Total assets*” means all assets including but not limited to cash, crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, net cash value of life insurance, machinery, equipment, cars, trucks, farm and other real estate including life estates and personal residence, value of beneficial interest in a trust, government payments or grants, and any other assets.

“Total assets” shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the lender.

The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“*Total liabilities*” means all liabilities including but not limited to accounts payable, notes or other indebtedness owed, taxes, rent, amount owed on any real estate contract or real estate mortgage, judgments, accrued interest payable, and any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

In only those cases where the liabilities include an amount for deferred tax liability that causes the applicant’s net worth to change from exceeding the maximum allowable net worth to an amount no greater than the maximum allowable net worth, the applicant is required to have a certified public accountant prepare the financial statement and provide supporting calculations and documentation acceptable to the board.

“*Veteran*” means the same as defined in Iowa Code section 35.1.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15; ARC 2226C, IAB 10/28/15, effective 12/2/15]

## **265—44.3(16) General recipient eligibility.**

**44.3(1) *Residence.*** The eligible applicant must be a resident of Iowa. The project must be located in Iowa.

**44.3(2) *Training and experience.*** The eligible applicant must have documented to the satisfaction of the authority sufficient education, training, and experience for the anticipated farm operations.

**44.3(3) *Access to capital.*** The eligible applicant must demonstrate to the satisfaction of the authority access to the following as may be needed: adequate working capital, farm machinery, livestock, and agricultural land.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15]

## **265—44.4(16) Beginning farmer loan program.**

**44.4(1) *Individual agricultural development bond program description.*** This program is intended to allow BFLP eligible applicants to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the bond purchaser. The authority will enter into a loan agreement with the BFLP eligible applicant and assign that BFLP loan to the bond purchaser. At the same time, the authority will issue a tax-exempt bond in the amount of the BFLP loan, and the bond purchaser will purchase that bond, which is used to fund the BFLP loan assigned to the bond purchaser. The bond which is issued by the authority and purchased by the bond purchaser is a nonrecourse obligation. The only security for the bond purchaser is the underlying security on the assigned BFLP loan.

**44.4(2) *Application procedures.*** The BFLP eligible applicant may apply for a BFLP loan with any bond purchaser. Any BFLP loan approved will be assigned to that bond purchaser. BFLP loan eligibility is determined by the requirements of the Act and the rules of the authority.

*a.* If a BFLP eligible applicant meets the BFLP loan eligibility requirements, the decision on whether to enter into the loan agreement is between the BFLP eligible applicant and the bond purchaser. The BFLP eligible applicant and bond purchaser must agree on the terms of the loan, such as interest rates, length of loan, down payment, service fees, origination charges and repayment schedule. The terms may not be more onerous than terms charged to similar customers for similar loans, taking into account the tax-exempt nature of interest on the BFLP loan.

*b.* Following completion of the BFLP loan application by the BFLP eligible applicant and approval by the bond purchaser, the BFLP loan application must be submitted to the authority for its review and approval.

*c.* The authority’s review will include, but not be limited to, whether:

- (1) The BFLP loan applicant is a BFLP eligible applicant;
- (2) The BFLP loan proceeds will be used for a qualified purpose under the Act, rules of the authority, and the Internal Revenue Code and IRS regulations relating to private activity bonds;
- (3) The terms of the BFLP loan comply with these rules; and
- (4) The bond purchaser meets the definition of a lender or bond purchaser.

*d.* The authority may require that the bond purchaser furnish any information which the authority deems necessary to determine whether the bond purchaser qualifies as either a lender or bond purchaser. If the authority determines that the bond purchaser does not qualify as either a lender or bond purchaser, it may deny the application.

*e.* The authority may charge fees as needed to defray its costs for processing the BFLP loan and bond.

**44.4(3) Issuance of bond.** All bonds issued by the authority will conform to all applicable requirements of the United States Internal Revenue Code of 1986 as amended, and its regulations.

*a.* Public hearings may be held by a staff member, board member of the IADD, an appointee or employee of the authority, or other qualified hearing officer.

*b.* Following approval of the BFLP loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the bond purchaser, in the amount and fitting the terms of the BFLP loan to the BFLP eligible applicant. The principal and interest on the bond are a limited obligation payable solely out of the revenues derived from the BFLP loan to the BFLP eligible applicant and the underlying collateral or other security furnished by or on behalf of the BFLP eligible applicant. The bond purchaser shall have no other recourse against the authority. The principal and interest on the bond do not constitute an indebtedness of the authority or a charge against its general credit or general fund.

**44.4(4) Priority of applications.** Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

**44.4(5) Procedures following bond issuance.** No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the bond proceeds, the bond purchaser and BFLP eligible applicant may be required to certify to the authority that the proceeds were used by the BFLP eligible applicant for a qualified purpose.

**44.4(6) Assignment of BFLP loans by bond purchasers.** A bond purchaser may assign a BFLP loan in whole or in part to any person, as defined in Iowa Code section 4.1(20). Servicing of the BFLP loan may also be assigned. The authority must be notified in writing prior to assignment of the BFLP loan.

**44.4(7) Assumption of BFLP loans, substitution of collateral and transfer of property.** BFLP loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is a BFLP eligible applicant for a BFLP loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the bond purchaser without the prior approval of the authority.

**44.4(8) Right to audit.** The authority shall have at any time the right to audit the records of the bond purchaser and the BFLP eligible applicant relating to the BFLP loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15; ARC 2226C, IAB 10/28/15, effective 12/2/15]

## **265—44.5(16) Loan participation program.**

**44.5(1) Program summary.** The loan participation program is intended to assist lenders and LPP eligible applicants (hereinafter referred to as “borrower(s)”) by purchasing a portion of a loan made by a lender to a borrower for the purchase of agricultural property.

*a. Supplement to borrower’s down payment.* The LPP loan can be used to supplement the borrower’s down payment so that the borrower can more readily secure a loan (the “participated loan”) from a lender.

*b. Last-in/last-out collateral position.* The program enables lenders to request a “last-in/last-out” LPP loan from the authority. The lender, on behalf of the borrower, shall apply for the LPP loan on application forms provided by the authority.

*c. Lender’s certification.* The lender and the borrower shall certify that the information included in the application and any other documents submitted for consideration is true and correct to the best of their knowledge.

*d. LPP loan in conjunction with BFLP loan.* The loan participation program may be used in conjunction with the authority's beginning farmer loan program, provided the borrower meets the criteria for both programs.

**44.5(2) Underwriting criteria.** Commercial underwriting criteria will be used as determined by the authority.

**44.5(3) Eligible projects and activities.**

*a. Use of project.* LPP loans must be for new purchases or new construction. Assets purchased or constructed with LPP loan funds must be used for agricultural purposes.

*b. Agricultural land.* The participated loan can be used for the purchase of agricultural land, which may include small acreages on which sufficient agricultural improvements are located to conduct a livestock operation. If a house is located on land for which an LPP loan is requested, an appraisal of the house will be made. If the appraised value of the house exceeds 50 percent of the appraised value of the property or total collateral, then the property will not be eligible for an LPP loan.

*c. Agricultural improvements.* The participated loan can be used for the construction or purchase of improvements located on agricultural land (which is suitable for use in farming). Examples of such improvements include, but are not limited to, the following: confinement systems for swine, cattle, or poultry; barns or other outbuildings; and grain storage facilities and silos.

*d. Livestock used for breeding purposes.* The participated loan can be used for the purchase of livestock for which an income tax deduction for depreciation is allowed in computing state and federal income taxes.

*e. Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the borrower's farming operation.

*f. Interim financing by lender.* Interim financing by the lender is allowed.

**44.5(4) Ineligible projects and activities.** The following program activities are ineligible:

*a. Refinancing of existing debt.* Refinancing of existing debt or new purchases which have been incurred by the borrower more than 60 days prior to approval of the LPP loan by the authority.

*b. Financing personal expenses.* Financing personal or living expenses and working capital to purchase such items as feed, seed, fertilizer, fuel, and feeder livestock.

*c. Down payment funds for contract sale.* Down payment for a contract sale, or in connection with a loan from a nonregulated lender.

**44.5(5) Program parameters.**

*a. Purchase price impact.* Maximum LPP loan amount and loan terms will be determined by the IADD board.

*b. LPP interest rate.* The IADD board will set the interest rate on the LPP loan.

*c. LPP loans outstanding.* Loans under the program may be issued more than once, provided that the outstanding LPP loan totals do not exceed the maximum amount set by the IADD board.

**44.5(6) LPP loan application procedures.**

*a. Financial statement.* Lenders may use their own form of financial statement. The authority may require other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments.

If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

*b. Income statement.* A copy of the borrower's prior three years' federal income tax returns (if available) shall be submitted.

*c. Background letter.* The application will also include a background letter on the borrower, documenting to the satisfaction of the authority sufficient training, experience and access to capital.

*d. Credit evaluation.* The lender will submit a credit evaluation of the project for which an LPP loan is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest

and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of an LPP loan.

*e. Processing LPP loan applications.* Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of LPP loans under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding LPP loans as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

*f. Security for participated loans and use of security documents.* The lender shall take any security, cosignatures, guarantees or sureties that are deemed necessary for any participated loan. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan.

*g. Recording documents and fees.* Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the borrower or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

**44.5(7) Loan administration procedures.**

*a. Lender's responsibilities.* The lender is responsible for servicing the participated loan following accepted standards of loan servicing and for transferring LPP loan payments to the authority.

(1) At the request of IADD, the lender shall:

1. On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.

2. Provide copies of insurance to the authority with the lender named as loss payee. The lender will apply payments to the participated loan on a pro-rata basis.

(2) The lender shall not, without prior consent of the authority:

1. Make or consent to any substantial alterations in the terms of any participated loan instrument;

2. Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;

3. Use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;

4. Accelerate the maturity of the participated loan;

5. Sue upon any participated loan instrument;

6. Waive any claim against any borrower, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

*b. Payment due dates.* Payment due dates for the LPP loan will be the same as for the lender's share of the loan.

*c. Prepayment penalty.* There is no penalty for early repayment of principal or interest.

*d. Repayment proceeds and collateral.* Without limitation, the repayment of proceeds and collateral shall include rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover on any participated loan.

*e. Subsequent loans.* Any loan or advance made by a lender to a borrower subsequent to obtaining an LPP loan under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

*f. Events of loan default.*

(1) Default will occur when the participated loan payment is 30 days past due. Notice to cure will be sent to the borrower with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

(2) After a participated loan is in default for a period of 30 days, the lender shall file with the authority monthly reports regarding the status of the participated loan.

(3) The authority may, anytime a participated loan is in default, purchase the unpaid portion of the participated loan from the lender including the note, security agreements, additional guarantees, and other documents. The authority would become the servicer of the participated loan in such case.

*g. Applying principal and interest payments.* Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

*h. Application of proceeds of loan liquidation.* Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid balance of the lender's portion and then to the unpaid portion of the LPP loan's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

First Priority: To the payment of the outstanding principal of and accrued interest on the lender's portion of the participated loan;

Second Priority: To the payment of the outstanding principal of and accrued interest on the authority's LPP loan;

Third Priority: To the payment on a pro-rata basis of all reasonable and necessary expenses incurred by the lender or the authority in connection with such liquidation or foreclosure procedures.

**44.5(8) Right to audit.** The authority shall have, at any time, the right to audit records of the lender and the borrower relating to any participated loan made under the program.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15; ARC 2226C, IAB 10/28/15, effective 12/2/15]

## **265—44.6(16) Beginning farmer tax credit program.**

### **44.6(1) General provisions.**

*a. Term.* The term of the credit shall be equal to the term of the agricultural assets transfer agreement, except that any unused credit may be carried forward for a period of ten years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

*b. Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

*c. Expiration of lease.* The BFTC eligible applicant will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and BFTC eligible applicant must reapply to continue the tax credit.

### **44.6(2) Application procedures.**

*a.* The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFTC eligible applicant.

*b.* Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, email address if available, social security number, length of the lease, type of lease, and location of the agricultural asset to be leased. In addition, the application shall have attached to it a copy of the lease agreement between the parties.

(2) BFTC eligible applicant information: name and address, email address if available, and location of the asset to be leased. In addition, the application shall have attached to it a copy of the BFTC eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFTC eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital. This letter may be submitted by one or more of the following: the BFTC eligible applicant, the taxpayer or another third party.

*c.* Complete applications shall be processed in the order they are received by the authority.

**44.6(3) Execution of an agricultural assets transfer agreement.** In addition to the requirements of rule 265—44.6(16), both the taxpayer and the BFTC eligible applicant shall execute an agricultural assets transfer agreement. The form used shall be a commonly accepted form and signed by all parties.

**44.6(4) Procedures following tax credit approval.** Either the BFTC eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.80.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15; ARC 2226C, IAB 10/28/15, effective 12/2/15]

**265—44.7(16) Beginning farmer custom farming tax credit program.****44.7(1) General provisions.**

*a. Term.* The term of the credit shall not exceed the term of the contract, except that any unused credit may be carried forward for a period of ten years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

*b. Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

*c. Expiration of custom hire contract.* The BFCF eligible applicant will continue to be eligible during the years of the custom farming contract. Upon expiration of the contract, both the taxpayer and BFCF eligible applicant must reapply to qualify for subsequent tax credits.

**44.7(2) Application procedures.**

*a.* The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFCF eligible applicant.

*b.* Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, email address if available, social security number, and description of the custom hire work completed. In addition, the application shall have attached to it a copy of the custom hire contract between the parties.

(2) BFCF eligible applicant information: name and address, email address if available, and description of the custom hire work completed. In addition, the application shall have attached to it a copy of the BFCF eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFCF eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital. This letter may be submitted by one or more of the following: the BFCF eligible applicant, the taxpayer or another third party.

*c.* Complete applications shall be processed in the order they are received by the authority.

**44.7(3) Execution of custom farming contract.** In addition to the requirements set forth in rule 265—44.7(16), both the taxpayer and the BFCF eligible applicant shall execute a custom farming contract. The form used shall be a commonly accepted form and signed by all parties.

**44.7(4) Calculation of custom hire tax credit.** The taxpayer and BFCF eligible applicant will submit a completed application to the authority, including a list of all custom work completed by the BFCF eligible applicant. The application will also include verification of all payments made to the BFCF eligible applicant for work completed.

**44.7(5) Procedures following tax credit approval.** Either the BFCF eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the custom hire contract. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.81.

[ARC 1112C, IAB 10/16/13, effective 9/26/13; ARC 1400C, IAB 4/2/14, effective 5/7/14; ARC 2009C, IAB 5/27/15, effective 7/1/15; ARC 2226C, IAB 10/28/15, effective 12/2/15]

These rules are intended to implement Iowa Code sections 16.4A, 16.4B, 16.5D, and 16.75 to 16.84.

[Filed Emergency ARC 1112C, IAB 10/16/13, effective 9/26/13]

[Filed ARC 1400C (Notice ARC 1113C, IAB 10/16/13), IAB 4/2/14, effective 5/7/14]

[Filed ARC 2009C (Notice ARC 1905C, IAB 3/4/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 2226C (Notice ARC 2127C, IAB 9/2/15), IAB 10/28/15, effective 12/2/15]

[Filed ARC 4319C (Notice ARC 4196C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

**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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CHAPTER 222  
CONTINUING EDUCATION FOR PODIATRISTS

**645—222.1(149,272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of podiatry.

“*Continuing education*” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and include a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a podiatrist in the state of Iowa.

**645—222.2(149,272C) Continuing education requirements.**

**222.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a podiatrist in this state shall be required to complete a minimum of 40 hours of continuing education.

**222.2(2)** Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

**222.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

**222.2(4)** No hours of continuing education shall be carried over into the next biennium.

**222.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—222.3(149,272C) Standards.**

**222.3(1) General criteria.** A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

*a.* Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

*b.* Pertains to subject matters which integrally relate to the practice of the profession;

*c.* Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

*d.* Fulfills stated program goals, objectives, or both; and

*e.* Provides proof of attendance to licensees in attendance including:

- (1) Date, location, course title, presenter(s);
- (2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

**222.3(2) Specific criteria.**

*a.* Licensees may obtain continuing education hours of credit by teaching in a college, university, or graduate school that is recognized by the U.S. Department of Education. The licensee may receive credit on a one-time basis for the first offering of a course.

*b.* Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences;

(2) Scientifically oriented material or risk management activities.

*c.* If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics.

*d.* A licensee who has prescribed opioids to a patient during a renewal cycle shall have obtained a minimum of 1 hour of continuing education regarding the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options.

*e.* Combined maximum per biennium of 20 hours for the following continuing education source areas shall not exceed:

(1) Presenting professional programs which meet the criteria listed in this subrule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

4. The program meets all the criteria in 645—222.3(149,272C).

(3) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;

2. Title of course/program;

3. Number of course/program contact hours; and

4. Official signature or verification of course/program sponsor.

(4) Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.

*f.* No office management courses will be accepted by the board.

*g.* Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

*h.* Credit is given only for actual hours attended.

[ARC 1420C, IAB 4/16/14, effective 5/21/14; ARC 4321C, IAB 2/27/19, effective 4/3/19]

**645—222.4(149,272C) Audit of continuing education report.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—222.5(149,272C) Automatic exemption.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—222.6(272C) Continuing education exemption for disability or illness.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—222.7(149,272C) Grounds for disciplinary action.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—222.8(272C) Continuing education exemption for disability or illness.** Rescinded IAB 8/3/05, effective 9/7/05.

**645—222.9(272C) Reinstatement of inactive practitioners.** Rescinded IAB 8/3/05, effective 9/7/05.

**645—222.10(272C) Hearings.** Rescinded IAB 8/3/05, effective 9/7/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 149.

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[Filed 7/12/05, Notice 5/11/05—published 8/3/05, effective 9/7/05]<sup>◇</sup>

[Filed 10/17/08, Notice 8/13/08—published 11/5/08, effective 12/10/08]

[Filed ARC 1420C (Notice ARC 1199C, IAB 11/27/13), IAB 4/16/14, effective 5/21/14]

[Filed ARC 4321C (Notice ARC 4051C, IAB 10/10/18), IAB 2/27/19, effective 4/3/19]

<sup>◇</sup> Two or more ARCs



CHAPTER 223  
PRACTICE OF PODIATRY

[Prior to 8/7/02, see rules 645—219.3(514F), 645—219.4(139A)]

**645—223.1(149) Definitions.** For the purposes of these rules, the following definitions shall apply:

“*Ambulatory surgical center*” or “*ASC*” means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416.

“*Conscious sedation*” means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

**645—223.2(149) Requirements for administering conscious sedation.** A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board.

**223.2(1)** The attestation shall include:

*a.* Evidence of successful completion within the past five years of a formal anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME); or

*b.* For a podiatrist who does not meet the requirements of paragraph “*a.*,” an attestation with evidence that the podiatrist is authorized by the governing body of a hospital or ASC to use conscious sedation. This attestation must be received by the board prior to January 1, 2005.

**223.2(2)** The podiatrist shall provide verification of current certification in Basic Cardiac Life Support (BCLS) or Advanced Cardiac Life Support (ACLS).

**223.2(3)** A podiatrist who has an attestation on file and continues to use conscious sedation shall meet the requirements of 645—Chapter 222 at the time of license renewal. A minimum of one hour of continuing education in the area of conscious sedation or related topics shall be required beginning with the renewal cycle of July 1, 2004, to June 30, 2006. Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license. In addition, the podiatrist shall maintain current certification in BCLS or ACLS.

**223.2(4)** A podiatrist shall only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

**223.2(5)** It is a violation of the standard of care for a podiatrist to use conscious sedation agents that result in a deep sedation or general anesthetic state.

**223.2(6)** Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. The report shall include the following:

- a.* Description of podiatric procedures;
- b.* Description of preoperative physical condition of patient;
- c.* List of drugs and dosage administered;
- d.* Description, in detail, of techniques utilized in administering the drugs;
- e.* Description of adverse occurrence, including:
  - (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
  - (2) Treatment instituted;
  - (3) Response of the patient to treatment;
- f.* Description of the patient’s condition on termination of any procedures undertaken;
- g.* If a patient is transferred, a statement providing where and to whom; and
- h.* Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

**223.2(7)** Failure to report. Failure to comply with subrule 223.2(6) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist's loss of authorization to administer conscious sedation or in other sanctions provided by law.

**223.2(8)** Record keeping. The patient's chart must include:

- a. Preoperative and postoperative vital signs;
- b. Drugs administered;
- c. Dosage administered;
- d. Anesthesia time in minutes;
- e. Monitors used;
- f. Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs;
- g. Name of the person to whom the patient was discharged; and
- h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

**223.2(9)** Failure to comply with these rules is grounds for discipline.

**645—223.3(139A) Preventing HIV and HBV transmission.** Any licensed podiatrist shall comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139A.22(3) and applicable hospital protocols established pursuant to Iowa Code section 139A.22(1). Failure to comply will be grounds for disciplinary action.

**645—223.4(149) Unlicensed graduate of a podiatric college.** An unlicensed graduate of a podiatric college may function in the licensed podiatrist's office only as a podiatric assistant. The licensed podiatrist shall have full responsibility and liability for the unlicensed person.

**223.4(1)** Treatments, charting, and notations completed by the unlicensed graduate must be initialed by that person and countersigned by the licensed podiatrist.

**223.4(2)** An unlicensed graduate shall not:

- a. Be referred to as "doctor" during professional contact with patients.
- b. Treat patients in the office without a licensed podiatrist present.
- c. Perform surgical work without direct supervision of a licensed podiatrist.
- d. Diagnose or prescribe medicine.
- e. Take independent actions regarding diagnosis, treatment or prescriptions.
- f. Visit nursing homes or make house calls without the presence of the licensed podiatrist.
- g. Bill for any services.

**645—223.5(149) Prescribing opioids.** A podiatrist shall review a patient's information contained in the prescription monitoring program database for each opioid prescription prior to prescribing, unless the patient is receiving inpatient hospice care or long-term residential facility care.

[ARC 4321C, IAB 2/27/19, effective 4/3/19]

These rules are intended to implement Iowa Code chapters 139A, 149 and 514F.

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[Filed ARC 4321C (Notice ARC 4051C, IAB 10/10/18), IAB 2/27/19, effective 4/3/19]

CHAPTER 224  
DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS  
[Prior to 2/6/02, see 645—Chapter 220]

**645—224.1(148F,149) Definitions.**

“*Board*” means the board of podiatry.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a podiatrist, orthotist, prosthetist, or pedorthist in Iowa.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—224.2(148F,149,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**224.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**224.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a podiatrist, orthotist, prosthetist, or pedorthist in this state.

*e.* Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**224.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

**224.2(4)** Practice outside the scope of the profession.

**224.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**224.2(6)** Habitual intoxication or addiction to the use of drugs.

**224.2(7)** Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

**224.2(8)** Rescinded IAB 11/27/13, effective 1/1/14.

**224.2(9)** Falsification of client records.

**224.2(10)** Acceptance of any fee by fraud or misrepresentation.

**224.2(11)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**224.2(12)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**224.2(13)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**224.2(14)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**224.2(15)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**224.2(16)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**224.2(17)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**224.2(18)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**224.2(19)** Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

**224.2(20)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**224.2(21)** Failure to pay costs assessed in any disciplinary action.

**224.2(22)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**224.2(23)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**224.2(24)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a podiatrist, orthotist, prosthetist, or pedorthist.

**224.2(25)** Failure to report a change of name or address within 30 days after it occurs.

**224.2(26)** Representing oneself as a podiatrist, orthotist, prosthetist, or pedorthist when one's license has been suspended or revoked, or when one's license is on inactive status.

**224.2(27)** Permitting another person to use the licensee's license for any purpose.

**224.2(28)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**224.2(29)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

*a.* Verbally or physically abusing a patient, client or coworker.

*b.* Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

*c.* Betrayal of a professional confidence.

*d.* Engaging in a professional conflict of interest.

**224.2(30)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**224.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**224.2(32)** Prescribing opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent prescribing practitioner engaged in the same practice.

[ARC 9508B, IAB 5/18/11, effective 6/22/11; ARC 1192C, IAB 11/27/13, effective 1/1/14; ARC 4321C, IAB 2/27/19, effective 4/3/19]

**645—224.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**645—224.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—224.5(149) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—224.6(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose.** The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**224.6(1)** Self-prescribing or self-dispensing controlled substances.

**224.6(2)** Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

*a.* Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

*b.* Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

**224.6(3)** Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code chapters 147, 148F, 149 and 272C.

[Filed 1/17/02, Notice 10/31/01—published 2/6/02, effective 3/13/02]

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## PSYCHOLOGISTS

CHAPTER 240	LICENSURE OF PSYCHOLOGISTS
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CHAPTER 240  
LICENSURE OF PSYCHOLOGISTS

**645—240.1(154B) Definitions.** For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of psychology.

“*Certified health service provider in psychology*” means a person who works in a clinical setting, is licensed to practice psychology and who has a doctoral degree in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a psychologist or health service provider in psychology in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice psychology to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of psychologists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*National examination*” means the Examination for Professional Practice in Psychology (EPPP).

“*Organized health service training program*” means a training program designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is ensuring breadth and quality of training.

“*Provisional license*” means a license issued to a person who has met the educational qualifications for licensure and is engaged in professional experience under supervision that meets the requirements of rules 645—240.1(154B), 645—240.6(154B) and 645—240.9(154B).

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—240.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice psychology to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of psychology to license persons who have the same or similar qualifications to those required in Iowa.

“*Recognized health service setting*” means a setting in which the delivery of direct preventive, assessment, and therapeutic intervention services are provided to individuals whose growth, adjustment or functioning is actually impaired or is demonstrably at high risk of impairment. The delivery of the aforementioned services includes, but is not limited to, the diagnosis or evaluation and treatment of mental illness and nervous disorders, excluding those mental illnesses and nervous disorders which are

established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

*“Reinstatement”* means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

*“Supervisor”* means a licensed psychologist who during the time in which supervision is provided, is actively licensed in the jurisdiction where the supervision occurs.

*“Testing service”* means Professional Examination Service (PES).  
[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1834C, IAB 1/21/15, effective 2/25/15]

#### **645—240.2(154B) Requirements for licensure.**

**240.2(1)** The following criteria shall apply to licensure:

*a.* An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Psychology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

*c.* Each application shall be accompanied by the appropriate fees payable to the Board of Psychology. The fees are nonrefundable.

*d.* Except as otherwise stated in these rules, no application will be considered by the board until:

(1) Official copies of academic transcripts sent directly from the school to the board of psychology have been received by the board; and

(2) Satisfactory evidence of the candidate’s qualifications has been supplied in writing on the prescribed forms by the candidate’s supervisors.

*e.* An applicant shall successfully pass the national examination.

*f.* The applicant shall have the national examination score sent directly from the testing service to the board.

*g.* Rescinded IAB 9/24/08, effective 10/29/08.

*h.* Incomplete applications that have been on file in the board office for more than two years shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

**240.2(2)** and **240.2(3)** Rescinded IAB 9/4/02, effective 10/9/02.  
[ARC 1029C, IAB 9/18/13, effective 10/23/13]

**645—240.3(154B) Educational qualifications.** A new applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology.

**240.3(1)** The degree in psychology shall be granted by an institution accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association or entity in other regions of the United States.

**240.3(2)** Rescinded IAB 9/24/08, effective 10/29/08.

**240.3(3)** Unless otherwise stated in these rules, at the time of an applicant’s graduation:

*a.* The program from which the doctoral degree in psychology is granted must be:

(1) Accredited by the American Psychological Association; or

(2) Accredited by the Canadian Psychological Association; or

(3) Designated by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Designation Project as a doctoral program in psychology; or

*b.* The applicant must hold a specialty diploma by examination from the American Board of Professional Psychology.

**240.3(4)** Rescinded IAB 9/18/13, effective 10/23/13.

**240.3(5)** Foreign-trained psychologists shall:

*a.* Provide an equivalency evaluation of their educational credentials by the National Register of Health Service Providers in Psychology, 1120 G Street NW, Suite 330, Washington, D.C. 20005, telephone (202)783-7663, Web site [www.nationalregister.org](http://www.nationalregister.org), or by an evaluation service with membership in the National Association of Credentials Evaluation Services, Inc., at [www.naces.org](http://www.naces.org). A certified translation of documents submitted in a language other than English shall be provided. The candidate shall bear the expense of the curriculum evaluation and translation of application documents. The educational credentials must be equivalent to programs stated in 240.3(3).

*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from a psychology program in the country in which the applicant was educated.

*c.* Submit evidence of meeting all other requirements for licensure stated in these rules.

*d.* Receive a final determination from the board regarding the application for licensure.

[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1029C, IAB 9/18/13, effective 10/23/13]

**645—240.4(154B) Examination requirements.** An applicant must pass the national examination to be eligible for licensure in Iowa.

**240.4(1)** To be eligible to take the national examination, the applicant shall:

*a.* Meet all requirements of subrule 240.2(1), paragraphs “a” to “c”;

*b.* Provide official copies of academic transcripts sent directly from the school to the board of psychology; and

*c.* Provide the completed supervision registration form according to the instructions on the form.

**240.4(2)** Notification of an applicant’s eligibility for the examination shall be sent by the board office to the testing service.

**240.4(3)** The EPPP passing score shall be utilized as the Iowa passing score.

**240.4(4)** The board of psychology shall mail examination results to the applicant.

**240.4(5)** Rescinded IAB 9/24/08, effective 10/29/08.

[ARC 1029C, IAB 9/18/13, effective 10/23/13]

**645—240.5(154B) Title designations.**

**240.5(1)** Applicants for licensure who have met educational requirements but have not yet passed the EPPP may be designated “psychology associate” or “associate in psychology.” The title “psychology associate” or “associate in psychology” shall not be used except in the person’s employment and supervision that meet the requirements of subrules 240.6(1) and 240.6(2).

**240.5(2)** Applicants for licensure who have passed the EPPP and who are fulfilling the experience requirements specified herein for licensure may be designated “psychology resident” or “resident in psychology.” The designation of “resident” shall not be used except in the employment and supervised experience that meet the requirements of subrules 240.6(1) and 240.6(2).

**240.5(3)** In addition to the title designations set forth in subrules 240.5(1) and 240.5(2), persons who possess provisional licenses shall add the designation “provisional license in psychology” following the “associate” or “resident” designation.

[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1834C, IAB 1/21/15, effective 2/25/15]

**645—240.6(154B) Supervised professional experience.**

**240.6(1)** The supervised professional experience shall:

*a.* Be a minimum of one year on a full- or part-time basis for no less than 1500 hours, or be a minimum of 1500 hours that are completed in no less than 10 months;

*b.* Apply the principles of psychology;

*c.* Be supervised by a licensed psychologist in accordance with subrule 240.6(2) and rule 645—240.9(154B);

*d.* Be performed competently as attested to by the supervisor; and

*e.* Have the fees and receipt of payment schedule remain the sole domain of the employing agency or supervising psychologist.

**240.6(2) Requirements.**

*a.* To meet the requirements of the supervised professional experience, the supervisee must:

(1) Meet face to face and individually with the supervisor during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;

(2) Have training that is appropriate to the functions to be performed;

(3) Work in the same physical setting as the supervisor unless a completed off-site supervision form is submitted to and approved by the board;

(4) Offer work in the name of the supervising psychologist;

(5) Begin the experience after all academic requirements for the doctoral degree are met and when all degree requirements are verified in writing;

(6) Not apply professional employment that occurs prior to meeting the doctoral academic requirements to the supervised professional experience; and

(7) Have the background, training, and experience that is appropriate to the functions performed.

*b.* To meet the requirements of the supervised professional experience, the supervisor must:

(1) Be a licensed psychologist as specified in rule 645—240.1(154B);

(2) Complete the supervision form provided by the board;

(3) Meet face to face and individually with the supervisee during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;

(4) Provide training that is appropriate to the functions to be performed;

(5) Work in the same physical setting as the supervisee unless a completed off-site supervision form is submitted to, and approved by the board;

(6) Have work offered in the name of the supervising psychologist;

(7) Have no more than three full-time persons associated with the supervisor as listed on the supervisor report form obtained from the board;

(8) Not provide group supervision as part of the 45 hours required for individual supervision;

(9) Not supervise any psychological practice or permit the supervisor's supervisee to engage in any psychological practice which the supervisor cannot perform competently; and

(10) Be responsible for determining competency of the work performed by the supervisee and the designation of the title of the supervisee.

**240.6(3)** Employment experience which is offered to satisfy one provision of the law may not be simultaneously offered to satisfy the educational provisions of the law. For example, employment experiences which are part of the required preparation for the doctoral degree will be applicable only to the doctoral degree requirements and may not be simultaneously offered to satisfy the supervised professional experience requirement.

**240.6(4)** Professional employment experience acquired by the applicant between the time all requirements were fulfilled for the doctoral degree and the time of the actual conferral of the degree may be credited toward the professional employment experience requirements for licensing, provided that the date of completion of all degree requirements is verified in writing by an appropriate academic official. Verification must come directly to the board from the academic official.

[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1834C, IAB 1/21/15, effective 2/25/15]

**645—240.7(154B) Certified health service provider in psychology.**

**240.7(1)** *Requirements for the health service provider in psychology.* The applicant shall:

*a.* Verify at least two years of clinical experience in a recognized health service setting or meet the standards of the National Register of Health Service Providers in Psychology. Two years of clinical experience means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in these rules and one year is in a recognized health service setting as defined in these rules that meets the requirements for supervised professional experience stated in subrules 240.6(1) and 240.6(2).

b. Complete a board-approved application and submit supporting documentation. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Psychology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board. Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

- (1) Considered invalid and shall be destroyed; or
- (2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

c. Submit with the application the health service provider fee payable to the Board of Psychology. The fee is nonrefundable.

d. Renew the certificate biennially at the same time as the psychology license renewal fees are due.

**240.7(2) Requirements of the organized health service training program.** Internship programs in professional psychology that are accredited by the Commission on Accreditation of the American Psychological Association (APA) or that hold membership in the Association of Psychology Postdoctoral and Internship Centers (APPIC) are deemed approved. Applicants completing an organized health service training program that is not APA-approved or APPIC-designated at the time the applicant completes the training shall cause documentation to be sent from the program to establish that the program:

- a. Provides the intern with a planned, programmed sequence of training experiences.
- b. Has a clearly designated doctoral-level staff psychologist who is responsible for the integrity and quality of the training program and is actively licensed by the board of psychology in the jurisdiction in which the program exists.
- c. Has two or more doctoral-level psychologists on the staff who serve as primary supervisors and are actively licensed by the board of psychology in the jurisdiction in which the program exists.
- d. Has supervision that is provided by staff members of the organized health service training program or by an affiliate of the organized health service training program who carry clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more doctoral-level psychologists.
- e. Provides training in a range of psychological assessment and treatment activities conducted directly with recipients of psychological services.
- f. Ensures that trainees have a minimum of 375 hours of direct patient contact.
- g. Includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two years) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved, seminars dealing with clinical issues, cotherapy with a staff person including discussion, group supervision, and additional individual supervision.
- h. Has training that is at the postclerkship, postpracticum, and postexternship level.
- i. Has a minimum of two interns at the internship level of training during any period of training.
- j. Designates for internship-level trainees titles such as "intern," "resident," "fellow," or other designation of trainee status.
- k. Has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainees' work and is made available to prospective interns.
- l. Provides a minimum of 1500 hours of training experience that shall be completed in no less than 12 months within a 24-consecutive-month period.

[ARC 9937B, IAB 12/28/11, effective 2/1/12]

**645—240.8(154B) Exemption to licensure.** Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall file a summary of intent to practice and provide verification of the license from the other jurisdiction. The summary shall be submitted to and approved by the board prior to practice in Iowa. The exemption shall be valid for 10 consecutive business days or not to exceed 15 business days in any 90-day period.

The summary and supporting documentation shall be accompanied by a check or money order for the processing fee for exemption to licensure pursuant to 645—Chapter 243. The fee is nonrefundable and shall be submitted payable to the Board of Psychology.

**645—240.9(154B) Psychologists' supervision of unlicensed persons in a practice setting.** The supervising psychologist shall:

1. Be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is a person other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.

2. Have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work shall be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors shall also be available for emergency consultation and intervention.

3. Provide work assignments that shall be commensurate with the skills of the supervisee. All procedures shall be planned in consultation with the supervisor.

4. Work in the same physical setting as the supervisee, unless other individual arrangements are approved by the board of psychology.

5. Make public announcement of services and fees; contact with laypersons or the professional community shall be offered only by or in the name of the supervising psychologist. Titles of unlicensed persons must clearly indicate their supervised status.

6. Provide specific information to clients when an unlicensed person delivers services to those clients, including disclosure of the unlicensed person's status and information regarding the person's qualifications and functions.

7. Inform clients of the possibility of periodic meetings with the supervising psychologist at the client's, the supervisee's or the supervisor's request.

8. Provide for setting and receipt of payment that shall remain the sole domain of the employing agency or supervising psychologist.

9. Establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.

10. Provide a detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience. This job description shall be made available to representatives of the board and service recipients upon request.

11. Be responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the unlicensed persons.

12. Maintain an ongoing record of supervision which details the types of activities in which the unlicensed person is engaged, the level of competence in each, and the type and outcome of all procedures.

13. Countersign all written reports and communications as "Reviewed and Approved" by the supervising psychologist.

**645—240.10(147) Licensure by endorsement.** An applicant who has been a licensed psychologist at the doctoral level under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may license by endorsement any applicant from the District of Columbia or another state, territory, province, or foreign country who:

**240.10(1)** Submits to the board a completed application.

**240.10(2)** Pays the licensure fee.

**240.10(3)** Provides verification of a current Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB). Applicants providing certification are deemed to have met the requirements stated in paragraphs 240.10(3)“a” to “c.” The board may license by endorsement any other applicant who:

*a.* Provides one of the following: the official EPPP score sent directly to the board from the ASPPB or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score established by the ASPPB shall be considered passing.

*b.* Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- (1) Licensee’s name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

*c.* Shows evidence of licensure requirements that are substantially equivalent to those required in Iowa by one of the following means:

(1) Provides:

1. Official copies of academic transcripts that have been sent directly from the school; and
2. Satisfactory evidence of the applicant’s qualifications in writing on the prescribed forms by the applicant’s supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision; or

(2) Has an official copy of one of the following certifications sent directly to the board from the certifying organization:

1. Current credentialing at the doctoral level as a health service provider in psychology by the National Register of Health Service Providers in Psychology.

2. Board certification by the American Board of Professional Psychology that was originally granted on or after January 1, 1983.

[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1029C, IAB 9/18/13, effective 10/23/13]

**645—240.11(147) Licensure by reciprocal agreement.** The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure in psychology.

**645—240.12(85GA, ch1043) Requirements for provisional licensure.** A provisional license shall not be granted unless the applicant has submitted a completed licensure application and the required licensure application fee.

**240.12(1)** An applicant for a provisional license shall provide the following:

*a.* A completed provisional license application. Applications are obtained and submitted via the board’s Web site at <https://ibpllicense.iowa.gov/>.

*b.* The provisional application fee payable to the Board of Psychology. The fee is nonrefundable.

**240.12(2)** The following documents must be received by the board office:

*a.* Official copies of academic transcripts sent directly from the school establishing that the requirements stated in 645—240.3(154B) are met; and

*b.* A completed supervision plan on the prescribed board form, signed by the applicant’s supervisors who meet the definition of “supervisor” in rule 645—240.1(154B). A change in a supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form.

**240.12(3)** The provisional license is effective for two years from the date of issuance. A provisional license may be renewed one time for a period of two years upon submission of the following:

*a.* A provisional license renewal application;

*b.* A provisional license renewal fee; and

*c.* A current supervision plan as required in these rules.

[ARC 1834C, IAB 1/21/15, effective 2/25/15]

**645—240.13(147) License renewal.**

**240.13(1)** The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

**240.13(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

**240.13(3)** A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—241.2(272C) and the mandatory reporting requirements of subrule 240.13(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

*b.* Submit the completed renewal application and renewal fee before the license expiration date.

**240.13(4)** Mandatory reporter training requirements.

*a.* A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

*b.* A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

*c.* A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

*d.* The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

*e.* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 241.

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

**240.13(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**240.13(6)** A person licensed to practice as a psychologist shall keep the person's license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

**240.13(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 243.1(3).

*a.* To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

*b.* No continuing education shall be required.

**240.13(8) Inactive license.** A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a psychologist or health service provider in psychology in Iowa until the license is reactivated. A licensee who practices as a psychologist or health service provider in psychology in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[ARC 9937B, IAB 12/28/11, effective 2/1/12; ARC 1834C, IAB 1/21/15, effective 2/25/15]

**645—240.14(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**240.14(1)** Submit a reactivation application on a form provided by the board.

**240.14(2)** Pay the reactivation fee that is due as specified in 645—Chapter 5.

**240.14(3)** Provide verification of current competence to practice as a psychologist or health service provider in psychology by satisfying one of the following criteria:

*a.* If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

*b.* If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

[ARC 1834C, IAB 1/21/15, effective 2/25/15]

**645—240.15(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—240.14(17A,147,272C) prior to practicing as a psychologist or health service provider in psychology in this state.

[ARC 1834C, IAB 1/21/15, effective 2/25/15]

These rules are intended to implement Iowa Code chapters 17A, 147, and 272C.

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[Filed ARC 1834C (Notice ARC 1730C, IAB 11/12/14), IAB 1/21/15, effective 2/25/15]

<sup>◊</sup> Two or more ARCs

CHAPTER 39  
EXPANDED PRACTICE STANDARDS

**657—39.1(155A) Purpose and scope.** The purpose of this chapter is to establish the minimum standards for the programs and activities identified in this chapter. These rules shall apply to all licensed pharmacists, other registered pharmacy personnel, and all pharmacies, including owners, engaged in the state of Iowa in the programs and activities identified in this chapter. These rules are in addition to rules of the board relating to the practice of pharmacy unless otherwise indicated by rule.

[ARC 3858C, IAB 6/20/18, effective 7/25/18]

**657—39.2 and 39.3** Reserved.

**657—39.4(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 prescriber.

**39.4(1) Drug therapy problems.** In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

**39.4(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 drug therapy plan as appropriate.

[ARC 3858C, IAB 6/20/18, effective 7/25/18]

**657—39.5** Reserved.

**657—39.6(155A) Statewide protocols.** A pharmacist may, pursuant to statewide protocols developed by the board in consultation with the department of public health and available on the board's website at [pharmacy.iowa.gov](http://pharmacy.iowa.gov), prescribe and dispense medications pursuant to rules 657—39.8(155A), 657—39.9(155A), and 657—39.11(155A).

[ARC 4270C, IAB 1/30/19, effective 3/6/19; see Delay note at end of chapter]

**657—39.7(135,147A) Opioid antagonist dispensing by pharmacist—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 website, 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.

**39.7(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 firefighter, 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.

*“Opioid-related overdose”* means the same as defined in Iowa Code section 147A.1.

*“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.

**39.7(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.

**39.7(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.

**39.7(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.

**39.7(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 including, but 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 the written materials 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.

**39.7(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 657—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.

**39.7(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.

**39.7(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 3858C, IAB 6/20/18, effective 7/25/18]

**657—39.8(155A) Statewide protocol—naloxone.** An authorized pharmacist may prescribe and dispense naloxone to patients 18 years and older pursuant to a statewide protocol developed pursuant to rule 657—39.6(155A) and in compliance with this rule. An authorized pharmacist may only delegate the dispensing of naloxone to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist.

**39.8(1) Definitions.** For the purposes of this rule, the following definitions shall apply:

“ACPE” means the Accreditation Council for Pharmacy Education.

“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 pharmacist.

“Authorized pharmacist-intern” means an Iowa-registered pharmacist-intern who has completed the training requirements for an authorized pharmacist pursuant to this rule.

“Board” means the Iowa board of pharmacy.

“Patient” means an individual consulting with a pharmacist for drug therapy and may include an individual in a position to assist someone at risk of an opioid-related overdose.

**39.8(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 naloxone utilization prior to dispensing naloxone pursuant to the statewide protocol.

**39.8(3) Assessment.** An authorized pharmacist shall assess a patient for eligibility to receive naloxone using criteria identified in the statewide protocol.

**39.8(4) Patient education.** Upon assessment and determination that a patient is eligible to receive and possess naloxone pursuant to the statewide protocol, an authorized pharmacist shall, prior to dispensing naloxone pursuant to the statewide protocol, provide training and education to the patient including, but not limited to, the information identified in this subrule. An authorized pharmacist may provide to the patient written materials that include, but may not be limited to, the information identified in this subrule, but the written materials shall not be in lieu of direct pharmacist consultation with the patient.

- a. The signs and symptoms of opioid-related overdose as described in the statewide protocol.
- 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 naloxone to be dispensed pursuant to the statewide protocol.
- d. Adverse reactions of naloxone as well as reactions resulting from opioid withdrawal following administration.
- e. The proper storage conditions, including temperature excursions, of the naloxone product being dispensed.
- f. The expiration date of the naloxone product being dispensed and the appropriate disposal of the naloxone product upon expiration.

g. Information about substance abuse or behavioral health treatment programs, if applicable.

**39.8(5) Labeling.** Naloxone dispensed pursuant to this rule shall be labeled in accordance with rule 657—6.10(126,155A), and the labeling shall not render the expiration date of the product illegible.

**39.8(6) Reporting.** As soon as reasonably possible, the authorized pharmacist shall notify the patient's primary health care provider of the naloxone product provided to the patient. If the patient does not have a primary health care provider, the authorized pharmacist shall provide the patient with a written record of the naloxone product provided to the patient and shall advise the patient to consult a physician.

**39.8(7) Records.** An authorized pharmacist shall maintain records of naloxone prescribed and dispensed pursuant to the statewide protocol.

[ARC 4270C, IAB 1/30/19, effective 3/6/19; see Delay note at end of chapter]

**657—39.9(155A) Statewide protocol—nicotine replacement tobacco cessation products.** An authorized pharmacist may prescribe and dispense nicotine replacement tobacco cessation products to patients 18 years and older pursuant to a statewide protocol developed pursuant to rule 657—39.6(155A) and in compliance with this rule. An authorized pharmacist may only delegate the dispensing of a nicotine replacement tobacco cessation product to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist.

**39.9(1) Definitions.** For the purposes of this rule, the following definitions shall apply:

“ACPE” means the Accreditation Council for Pharmacy Education.

“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 pharmacist.

“Authorized pharmacist-intern” means an Iowa-registered pharmacist-intern who has completed the training requirements for an authorized pharmacist pursuant to this rule.

“Board” means the Iowa board of pharmacy.

**39.9(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 nicotine replacement tobacco cessation product utilization prior to dispensing such products under the statewide protocol.

**39.9(3) Assessment.** An authorized pharmacist shall assess a patient for appropriateness of receiving a nicotine replacement tobacco cessation product pursuant to the statewide protocol.

**39.9(4) Patient counseling and instructions.** Upon assessment and determination that provision of the nicotine replacement tobacco cessation product is appropriate pursuant to the statewide protocol, an authorized pharmacist shall, prior to dispensing such product, provide counseling and instructions to the patient pursuant to rule 657—6.14(155A).

**39.9(5) Labeling.** Nicotine replacement tobacco cessation products dispensed pursuant to this rule shall be labeled in accordance with rule 657—6.10(126,155A), and the labeling shall not render the expiration date of the product illegible.

**39.9(6) Reporting.** As soon as reasonably possible, the authorized pharmacist shall notify the patient's primary health care provider of the nicotine replacement tobacco cessation product provided to the patient. If the patient does not have a primary health care provider, the authorized pharmacist shall provide the patient with a written record of the nicotine replacement tobacco cessation product provided to the patient and shall advise the patient to consult a physician.

**39.9(7) Records.** An authorized pharmacist shall maintain records of nicotine replacement tobacco cessation products prescribed and dispensed pursuant to the statewide protocol.

[ARC 4270C, IAB 1/30/19, effective 3/6/19; see Delay note at end of chapter]

**657—39.10(155A) Vaccine administration by pharmacists—physician-approved protocol.** Through June 30, 2019, 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.

**39.10(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 39.10(2).

“Authorized pharmacist-intern” means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in paragraphs 39.10(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.

**39.10(2) Authorized pharmacist training and continuing education.** An authorized pharmacist shall document successful completion of the requirements in paragraph 39.10(2)“a” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 39.10(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 basic cardiac life support through a training program designated for health care providers that includes hands-on training.

(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 ACPE-approved continuing education with the ACPE topic designator “06” followed by the letter “P.”

*c. Certification maintained.* During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in basic cardiac life support through a training program designated for health care providers that includes hands-on training.

**39.10(3) Protocol requirements.** A pharmacist may administer vaccines pursuant to a protocol based on CDC recommendations. A protocol shall be unique to a pharmacy. The pharmacy shall comply with the parameters of the protocol. 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. A protocol:

- a.* Shall be signed by an Iowa-licensed 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 the pharmacist 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.

**39.10(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.

**39.10(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.

**39.10(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 a serious complication, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

**39.10(7) *Verification and reporting.*** The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 39.10(4). An authorized pharmacist shall:

- a.* Prior to administering a vaccine identified in subrule 39.10(5) or 39.10(6), consult the statewide immunization registry or health information network.
- b.* As soon as reasonably possible following administration of a vaccine identified in subrule 39.10(5) or 39.10(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 3858C, IAB 6/20/18, effective 7/25/18; ARC 4270C, IAB 1/30/19, effective 3/6/19; see Delay note at end of chapter]

**657—39.11(155A) Vaccine administration by pharmacists—statewide protocol.** An authorized pharmacist may prescribe and administer vaccines and immunizations pursuant to a statewide protocol developed pursuant to rule 657—39.6(155A) and in compliance with this rule. An authorized pharmacist may only delegate the prescribing and administration of a vaccine to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist.

**39.11(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 39.11(3).

“*Authorized pharmacist-intern*” means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in subrule 39.11(3).

“*Board*” means the Iowa board of pharmacy.

“*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.”

“*Vaccine*” means a specially prepared antigen administered to a person for the purpose of providing immunity.

**39.11(2) *Vaccines authorized by statewide protocol.*** The vaccines authorized to be prescribed and administered pursuant to the statewide protocol shall include:

- a.* To patients ages 18 years and older:

(1) An immunization or vaccination recommended by ACIP in its approved vaccination schedule for adults.

(2) An immunization or vaccination recommended by CDC for international travel.

(3) A Tdap (tetanus, diphtheria, acellular pertussis) vaccination in a booster application.

(4) Other emergency immunizations or vaccinations in response to a public health emergency.

*b.* To patients ages six months and older:

(1) A vaccine or immunization for influenza.

(2) Other emergency immunizations or vaccines in response to a public health emergency.

*c.* To patients ages 11 years and older:

(1) The final two doses in a course of vaccinations for human papillomavirus (HPV).

(2) Reserved.

**39.11(3)** *Authorized pharmacist training and continuing education.* An authorized pharmacist shall document successful completion of the requirements in paragraph 39.11(3) “a” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 39.11(3) “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 basic cardiac life support through a training program designated for health care providers that includes hands-on training.

(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 ACPE-approved continuing education with the ACPE topic designator “06” followed by the letter “P.”

*c. Certification maintained.* During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in basic cardiac life support through a training program designated for health care providers that includes hands-on training.

**39.11(4)** *Assessment.* An authorized pharmacist shall assess a patient for appropriateness of receiving a vaccine pursuant to the statewide protocol.

**39.11(5)** *Verification and reporting.* Prior to the prescribing and administration of an immunization pursuant to the statewide protocol, the authorized pharmacist shall consult and review the statewide immunization registry or health information network. As soon as reasonably possible following administration of a vaccine, the pharmacist shall report such administration to the patient’s primary health care provider, primary physician, and a statewide immunization registry or health information network. If the patient does not have a primary health care provider, the pharmacist shall provide the

patient with a written record of the vaccine administered to the patient and shall advise the patient to consult a physician.

[ARC 4270C, IAB 1/30/19, effective 3/6/19; see Delay note at end of chapter]

**657—39.12** Reserved.

**657—39.13(155A) Collaborative drug therapy management.** An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with an authorized provider pursuant to the requirements of this rule. The authorized provider 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.

**39.13(1) Definitions.** For the purpose of this rule, the following definitions shall apply:

*“Authorized pharmacist”* means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this subrule.

*“Authorized provider”* means an Iowa-licensed prescribing practitioner who is authorized by the practitioner’s professional licensing authority to participate in a collaborative practice agreement with an authorized pharmacist pursuant to these rules and the rules of the practitioner’s professional licensing authority. An authorized provider 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 authorized provider may delegate only drug therapies that are in areas common to the authorized provider’s practice.

*“Board”* means the board of pharmacy.

*“Collaborative drug therapy management”* means participation by an authorized pharmacist and an authorized provider in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

*“Collaborative practice”* means that an authorized provider may delegate aspects of drug therapy management for the authorized provider’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 an authorized provider establishing drug therapy management for one or more of the pharmacist’s and authorized provider’s patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 39.13(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 authorized providers 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 authorized providers at a hospital or the hospital’s clinics or only to those pharmacists and authorized providers who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 39.13(3).

“*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.

“*Therapeutic interchange*” means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

**39.13(2) Community practice protocol.**

a. An authorized pharmacist shall engage in collaborative drug therapy management with an authorized provider only under a written protocol that has been identified by topic. Protocols shall be made available upon request of the board or the licensing board of the authorized provider.

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 authorized provider who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The authorized provider 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 authorized provider.

(3) The name and contact information of the principal authorized provider 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 authorized provider. 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 authorized provider 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 authorized provider, the authorized pharmacist shall secure such and notify the patient’s authorized provider within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the authorized provider 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 authorized provider.

(10) A description of the types of reports the authorized pharmacist is to provide to the authorized provider 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 authorized provider.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the provider 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 an authorized provider from delegating collaborative drug therapy management to any unlicensed or licensed person other than another authorized provider or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the authorized provider 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 authorized provider.

*d.* The collaborative drug therapy protocol shall be kept on file in the pharmacy and be made available upon request of the board or the authorized provider's licensing board.

*e.* An authorized provider may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the authorized provider notifies the authorized pharmacist in writing. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. Written notification shall be maintained in the pharmacy and be made available upon request of the board or the authorized provider's licensing board.

*f.* The authorized provider or pharmacist who initiates a protocol with a patient is responsible for securing the 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 authorized provider shall maintain the patient consent in the patient's medical record.

**39.13(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 providers 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 authorized provider. 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 authorized provider for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's authorized provider 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 authorized provider to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

[ARC 3858C, IAB 6/20/18, effective 7/25/18]

**657—39.14 and 39.15** Reserved.

**657—39.16(155A) 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, chapter 1113, section 31, and by 2013 Iowa Acts, chapter 138, section 128. 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.

**39.16(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.

**39.16(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—39.13(155A).

**39.16(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 39.16(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.

**39.16(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.

**39.16(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.

**39.16(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 3858C, IAB 6/20/18, effective 7/25/18]

These rules are intended to implement Iowa Code sections 135.190, 147.76, 147A.18, 155A.2, 155A.3, 155A.13, 155A.33, and 155A.44; 2018 Iowa Acts, Senate File 2322; and 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, chapter 1113, section 31, and by 2013 Iowa Acts, chapter 138, section 128.

[Filed ARC 3858C (Notice ARC 3509C, IAB 12/20/17), IAB 6/20/18, effective 7/25/18]

[Filed ARC 4270C (Notice ARC 4096C, IAB 10/24/18), IAB 1/30/19, effective 3/6/19]<sup>1</sup>

<sup>1</sup> March 6, 2019, effective date of ARC 4270C [amendments to ch 39] delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 2019.

**REVENUE DEPARTMENT[701]**

Created by 1986 Iowa Acts, chapter 1245.

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CHAPTER 82  
CIGARETTE TAX AND REGULATION OF DELIVERY SALES OF ALTERNATIVE NICOTINE  
PRODUCTS OR VAPOR PRODUCTS

[Prior to 12/17/86, Revenue Department[730]]

**701—82.1(453A) Permits required.** Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

**82.1(1) Distributor's permit.** Every person acting as a distributor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributor is any person who obtains unstamped cigarettes within or without this state by manufacture, production, import or by any means for the purpose of making the first intrastate sale or distribution or the first use or consumption in Iowa. Every distributor holding a distributor's permit will cause to be affixed, within or without Iowa, all cigarette tax stamps or meter impressions as set forth in rule 82.8(453A) and Iowa Code section 453A.10. The distributor permit expires annually on June 30, and costs \$100. A distributor must obtain a duplicate permit for each place of business owned or operated by the distributor from which distributor activities are carried on. Duplicate distributor permits may be obtained from the department at an annual cost of \$5 for each duplicate permit. A distributor may act as a wholesaler without obtaining a wholesaler's permit, but a wholesaler's permit may be obtained upon meeting all of the requirements for the issuance of a wholesaler's permit. If a distributor performs any other function which requires a permit, a separate permit must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

**82.1(2) Wholesaler's permit.** Every person acting as a wholesaler as defined in Iowa Code section 453A.1 must obtain a wholesaler's permit. A wholesaler is any person, other than a distributor or a distributing agent, who sells or distributes cigarettes within Iowa for resale. A "sale or distribution" of cigarettes connotes a transfer of cigarettes from one person or entity to another person or entity. *Union Oil Co. of California v. State*, 2 Wash. 2d 436, 98 P, 2d 660 (1940); *State v. Nash Johnson and Sons' Farms Inc.*, 263 N.C. 66, 138 S.E. 2d 773 (1964). Therefore, an intraentity transfer is not a transaction which qualifies as a function of a wholesaler. The wholesaler permit expires annually on June 30, and costs \$100 annually. A wholesaler must obtain a duplicate permit for each place of business owned or operated by the wholesaler from which wholesale activities are carried on. Duplicate wholesaler permits may be obtained from the department at an annual cost of \$5 for each duplicate permit. If a person is not performing the functions of a wholesaler, a permit will not be issued.

The following example will illustrate the application of this subrule:

The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a permitted distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales, and makes no other sales. The storage of stamped cigarettes and the retail sale of cigarettes are not functions of a wholesaler, and XYZ would not be eligible for a wholesaler's permit.

**82.1(3) Cigarette vendor's permit.** Every person acting as a cigarette vendor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A cigarette vendor is any person who takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines for the purpose of selling cigarettes at retail, and does so by reason of ownership, agreement or contract.

A retailer who holds a retail permit is not required to get a cigarette vendor's permit if the retail permittee is, in fact, the owner of the cigarette vending machine(s) which is operated in the location described in the retail permit. The cigarette vendor's permit expires annually on June 30, and costs \$100 annually. A cigarette vendor must have a duplicate permit for each place of business from which cigarette vending machines are furnished, installed or serviced. A duplicate permit can be obtained from the department for an annual cost of \$5. The duplicate permit applies to additional places of business from which the cigarette vendor conducts operations and not to those places of business where the cigarette vending machines are installed for retail sales.

EXAMPLE: A cigarette vendor owns three warehouses from which the vendor supplies cigarettes to 100 vending machines located at various retail establishments. The total permit cost for the vendor would be \$110 (\$100 for a regular permit plus \$10 for two duplicate permits at \$5 each).

**82.1(4) *Railway retail permit.*** A retail permit may be issued to a railway dining car company, railway sleeping car company, railroad or a railway company. A retailer's permit for railway cars is issued by the department for an annual cost of \$25 and expires on June 30 of each year. A duplicate permit is required for each car in which cigarettes are stored for sale or sold and each duplicate permit is issued by the department at an annual cost of \$2.

**82.1(5) *Manufacturer's permit.*** Any manufacturer, as defined in Iowa Code section 453A.1, may obtain a manufacturer's permit from the department. A manufacturer is any person who ships cigarettes into this state from outside the state. The permit is issued without cost and is valid until revoked or canceled. The permit allows the manufacturer to purchase tax stamps from the department and to affix such stamps to cigarettes outside of this state prior to their shipment into the state. A manufacturer is required to affix stamps to cigarettes prior to their shipment into this state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

**82.1(6) *Distributing agent's permit.*** Every person acting as a distributing agent as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributing agent is any person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received from the manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such storage place. The distributing agent's permit is issued by the department at an annual cost of \$100 and expires on June 30 of each year. A separate permit at the \$100 cost must be obtained for each place of business owned or operated within the state by the distributing agent. The permit authorizes the distributing agent to store unstamped cigarettes which are received in interstate commerce for distribution or delivery to distributors upon orders received from outside this state or to be sold outside this state. Stocks of cigarettes held for interstate and intrastate commerce must be kept separate.

**82.1(7) *Retailer's permit.***

*a. In general.* Every person acting as a retailer, as defined in Iowa Code section 453A.1, must obtain a permit. A retailer is any person who:

- (1) Directly sells, distributes or offers for sale cigarettes for consumption, or
- (2) Possesses cigarettes for direct sale for consumption.

Retail permits are issued by the following authorities at the following prices:

1. Within unincorporated areas of a county, by the county board of supervisors at an annual cost of \$50.
2. Within the city limits of a city of less than 15,000 population, by the city council, at an annual cost of \$75.
3. Within the city limits of a city equal to or greater than 15,000 population, by the city council, at an annual cost of \$100.

The retail permit expires on June 30 of each year. A renewal sticker furnished by the department containing the appropriate year and number may be issued in lieu of a new permit where the place of business of the retail permit holder has remained the same. The retail permit is valid only for the location described in the permit, and a retailer must obtain a separate permit for each place of business owned or operated by the retailer. (See subrule 82.2(3))

The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on its issuance. *Bernstein v. City of Marshalltown*, 215 Iowa 1168, 248 N.W. 26 (1933); *Ford Hopkins Co. v. City of Iowa City*, 216 Iowa 1286, 248 N.W. 668 (1933); 1938 O.A.G. 708. The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.

*b. Mobile retailer.* If a cigarette retailer sells cigarettes from a mobile concession vehicle, the vehicle itself shall be considered a place of business. A city has the discretionary power to grant a retail cigarette permit to a place of business located within the corporate limits of that city. A county

has the discretionary power to grant a retail cigarette permit to a place of business located within the unincorporated areas of the county. If a retailer is selling cigarettes from a mobile concession vehicle within the area of several permit-issuing authorities, the retailer must obtain a permit from each authority. The retailer is operating a single place of business within the jurisdiction of the several authorities and is, therefore, subject to regulation by each.

The location described on the permit shall include identification of the vehicle and the address of the permanent place of business from which the vehicle is dispatched. If the vehicle is traded in for a new vehicle, the exchange provisions of subrule 82.2(3) shall apply.

This rule is intended to implement Iowa Code section 453A.13 as amended by 2000 Iowa Acts, Senate File 2366, and sections 453A.16, 453A.17, and 453A.23.

**701—82.2(453A) Partial year permits—payment—refund—exchange.** For purposes of this rule, “year” means the cigarette tax year running from July 1 of year A to June 30 of year B and “quarter” means a yearly quarter with the first quarter commencing on July 1.

**82.2(1) Partial payment.** If any permit is granted other than in the first quarter, the following partial payments are required:

1. During the second quarter - 75 percent of the permit fee.
2. During the third quarter - 50 percent of the permit fee.
3. During the fourth quarter - 25 percent of the permit fee.

**82.2(2) Partial refund.** If any unrevoked permit for which the entire annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

1. During the first quarter - 75 percent of the permit fee.
2. During the second quarter - 50 percent of the permit fee.
3. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 75 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded by the entity which issued the permit:

1. During the second quarter - 50 percent of the permit fee.
2. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 50 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

During the third quarter - 25 percent of the annual fee.

**82.2(3) Exchange of permits.** If a permittee changes the location of an operation requiring a permit but remains within the jurisdiction of the same entity which granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the permit) for a valid permit free of charge, without the partial payment-partial refund process. (1934 O.A.G. 106)

The following nonexclusive examples will illustrate the application of this rule:

**EXAMPLE 1:** City Bar and Grill sells cigarettes at retail and has obtained a retail cigarette permit from the city of Des Moines. The establishment is moved across the street but remains within the city limits of Des Moines. The retail permit is valid only for the location described in the permit, and therefore, the original permit is no longer valid. However, since the establishment has remained within the jurisdiction of the entity which granted the original permit, Des Moines, the original, presently invalid permit may be exchanged for a valid permit with a new location description at no cost.

**EXAMPLE 2:** Same as Example 1, except the new location of City Bar and Grill is outside the corporate limits of Des Moines and within the unincorporated area of Polk County. City Bar and Grill would have to surrender the old permit to the city of Des Moines and obtain a new permit from Polk County with the schedules set forth in this rule applying.

This rule is intended to implement Iowa Code section 453A.13, subsections 3 and 4.

**701—82.3(453A) Bond requirements.** The amount of the bond required for each permit shall be as follows:

1. Distributor permit - \$2,500
2. Wholesaler permit - \$2,500

3. Vendor permit - \$1,000
4. Railway car retail permit - \$500
5. Manufacturer permit - \$5,000
6. Distributing agent permit - \$2,500
7. Retail permit - \$0-
8. Nonpermittee storing interstate cigarettes - \$5,000

If a person is required to obtain more than one type of permit, the bond requirements shall be cumulative and additional bonds or a single bond equal to the total aggregate requirements must be obtained. (See rule 701—81.7(453A) for the required form of the bond.)

This rule is intended to implement Iowa Code sections 453A.14, 453A.17 and 453A.23.

#### **701—82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax.**

**82.4(1) Tax.** See Iowa Code section 453A.6 for the rate of tax imposed on cigarettes.

**82.4(2) Attachment.** The tax is imposed when the cigarettes are received by any person in Iowa for the purpose of making a “first sale” of the cigarettes (as defined in Iowa Code section 453A.1). If the tax is not paid by the person making the first sale, it must be paid by any person into whose possession such cigarettes come until the tax has been paid, the tax to be paid only once. The fact that the tax is eventually paid will not relieve the person’s standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

**82.4(3) Exemption.** If all of the following conditions are met, the Iowa cigarette tax need not be paid:

- a. The cigarettes are imported on or about the person claiming the exemption,
- b. The total quantity of cigarettes so imported is equal to or less than 40,
- c. The seal of the individual cigarette package has been broken, and
- d. The cigarettes are actually used by the person so importing and are not sold or offered for sale.

**82.4(4) Exclusivity of tax.** No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

**82.4(5) Sales exempt from tax.** Sales of cigarettes which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps which are attached to cigarette packages which are later sold exempt.

a. *Sales to the federal government.* Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state, are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37. *U.S. v. Tax Commission of Mississippi*, 421 U.S. 599, 44 L.Ed. 2d 404, 95 S.Ct. 1872 (1975).

b. *Sales by or to Indians.* Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. The Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 453A. The cigarettes must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser’s filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe’s filing a claim for refund of the tax paid by the tribe on cigarettes sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.6 as amended by 1999 Iowa Acts, chapter 151.

#### **701—82.5(453A) Cigarette tax stamps.**

**82.5(1) In general.** To evidence the payment of the cigarette tax, cigarette stamps must be securely affixed to the individual cigarette containers. The stamps shall be provided by the director, and either

sold directly to a distributor or a manufacturer holding a valid distributor's or manufacturer's permit or through authorized banks, as defined in Iowa Code section 524.103 to these same permittees. The possession of unstamped cigarettes by persons not authorized to possess unstamped cigarettes shall be prima facie evidence of the nonpayment of the tax. The penalty for possession of unstamped cigarettes is set forth in Iowa Code section 453A.31(1) as amended by 1999 Iowa Acts, chapter 151, section 81. Any person in possession of unstamped cigarettes must pay the tax directly to the department. If sales of cigarettes exceed the purchase of cigarette stamps by persons authorized and responsible to affix stamps, there is established a rebuttable presumption that the excess cigarettes were sold without the tax stamps affixed thereto.

**82.5(2) *Purchase of stamps from the department.*** Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by registered mail or similar delivery service at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

**82.5(3) *Purchase of stamps from authorized bank.*** The purchase of stamps from an authorized bank must be made by the distributor or manufacturer or the distributor's or manufacturer's representative. The permittee shall furnish the bank with a requisition form prescribed by the department along with payment for the full price of the stamps less any discount as provided in rule 701—82.7(453A). The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers who elect to purchase stamps from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected, but may still purchase stamps directly from the department. See rule 701—82.6(453A) for restrictions on authorized banks as to the sale of stamps. Also see rule 82.11(453A) relating to refunds.

This rule is intended to implement Iowa Code sections 453A.6, 453A.8, and 453A.28 as amended by 1999 Iowa Acts, chapter 151, and Iowa Code sections 453A.7, 453A.10, 453A.12, and 453A.35.

### **701—82.6(453A) Banks authorized to sell stamps—requirements—restrictions.**

**82.6(1) *Authorization.*** The director has the discretion to allow the sale or distribution of stamps through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps is not a mandatory direction, but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. Some of the factors the director will consider in determining whether or not to authorize a bank to sell stamps are:

- a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,
- b. The anticipated volume of stamps to be purchased by the requesting distributors or manufacturers,
- c. Access to transportation systems, and
- d. Prior experience with the bank.

**82.6(2) *Sale of stamps.*** An authorized bank may sell cigarette stamps only to distributors or manufacturers holding valid permits who have "elected" (as per subrule 82.5(3)) to purchase stamps from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers who have so elected, and the bank shall not sell stamps to persons not on the list. The

bank must receive payment in full, less the discount, before selling stamps. See rule 82.7(453A). A bank is not authorized to accept credit memorandums from distributors or manufacturers.

**82.6(3) *Stamp inventory.*** Each bank shall keep an adequate inventory of stamps on hand to supply distributors or manufacturers assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

**82.6(4) *Reports and remittances.*** Each bank authorized to sell stamps shall forward to the department the invoices, requisitions, and remittances for stamps sold on a daily basis. Each bank shall forward to the department, on the first working day of each month, an inventory report which shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

**82.6(5) *Audit.*** For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps on the days from June 25 to June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp sales.

Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of three years.

**82.6(6) *Termination of authorization.*** The director may terminate the authorization of a bank to sell stamps if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A, or if the director deems it desirable for the efficient distribution of stamps. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing a protest pursuant to 701—Chapter 7 within 30 days of notice of termination. A bank may voluntarily terminate the sale of stamps by giving the department 90 days' written notice. Upon termination, the bank must immediately return all stamps and present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

**701—82.7(453A) *Purchase of cigarette tax stamps—discount.*** Upon the purchase of cigarette tax stamps, the distributor or manufacturer shall be entitled to a discount of 2 percent from the face value of the stamps.

This rule is intended to implement Iowa Code section 453A.8.

**701—82.8(453A) *Affixing stamps.*** Every package of cigarettes received in this state by a permitted distributor or for distribution within or without the state of Iowa must be stamped within 48 hours of its receipt, unless the distributor is also permitted as and is acting as a distributing agent. The cigarettes held by a person acting as a distributor and those held by the same person who is also acting as a distributing agent must be kept separate, and if not, the entire inventory will be subject to the 48-hour limitation. The 48-hour period shall be exclusive of Sundays and legal holidays. (See 1958 O.A.G. 25.)

This rule is intended to implement Iowa Code sections 453A.10 and 453A.17.

**701—82.9(453A) *Reports.*** Every person permitted as a cigarette distributor or manufacturer, or any other person as deemed necessary by the director, must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the person to a penalty as set forth in Iowa Code section 453A.31. (See rule 701—10.76(453A).) The report must be so certified or the report shall be considered incomplete. Whenever “cigarette” is used in this rule, it shall also include taxable “little cigars.”

**82.9(1) *In-state distributors not exporting cigarettes.*** Every distributor with a place of business in Iowa where cigarettes are stamped and who is not engaged in exporting cigarettes from this state shall

file Forms 70-017 (Monthly Cigarette Tax Report) and 70-020 (Self Audit Report). The two forms are considered a multipart report and both forms must be completed before the report will be considered "filed."

- a. The Monthly Cigarette Tax Report shall include, but not be limited to:
  1. The distributor's name, permit number and address;
  2. The amount of Iowa revenue purchased during the month;
  3. The quantity of cigarettes on hand at the end of the month;
  4. The amount of revenue on hand at the end of the month;
  5. Purchases of cigarettes during the month and as to each purchase, the seller's name, the date of purchase, the invoice number, and the quantity purchased;
  6. An inventory report as to out-of-state revenue;
  7. The quantity of cigarettes returned to the factory along with supporting documents; and
  8. The certification of the person responsible for making the report.
- b. The Self Audit Report shall include, but not be limited to:
  1. The distributor's name, permit number and address;
  2. An inventory accounting for cigarettes; and
  3. An inventory accounting for revenue.

The quantity of cigarettes distributed or stamped should be equal to the tax equivalent of the revenue used. Any discrepancy must be adequately explained.

**82.9(2) *In-state distributors exporting cigarettes.*** Every distributor with a place of business in Iowa where cigarettes are stamped who also engages in exporting cigarettes from this state shall file Form 70-017 (Monthly Cigarette Tax Report). This form must be completed before the report will be considered "filed."

**82.9(3) *Out-of-state distributors.*** Every distributor stamping cigarettes only without the state shall file Form 70-018 (Monthly Cigarette Tax Report). The Monthly Cigarette Tax Report (Form 70-018) shall include, but not be limited to:

1. The distributor's name, address and permit number;
2. An itemized statement of Iowa revenue purchased;
3. An inventory accounting of Iowa revenue;
4. A detailed schedule of cigarette distribution in Iowa and as to each distribution, the date, the name of purchaser or receiver, the purchaser's address and the quantity of cigarettes distributed; and
5. The certification of the person responsible for making the report.

**82.9(4) *Manufacturers and other persons.*** The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

This rule is intended to implement Iowa Code section 453A.15 as amended by 1999 Iowa Acts, chapter 151.

#### **701—82.10(453A) Manufacturer's samples.**

**82.10(1)** Iowa Code section 453A.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

- a. Rescinded IAB 1/22/92, effective 2/26/92.
- b. Be sent to a permitted distributor.
- c. Rescinded IAB 1/22/92, effective 2/26/92.
- d. Have tax paid thereon by a distributor.
- e. Be clearly marked "sample."
- f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

**82.10(2)** Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a permitted distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

Permit number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

**82.10(3)** Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

*a. Promotion using cigarettes.* If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B, by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a permitted distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 421B.4 would not prevent the distribution of cigarettes in this example, since 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes which are sold is controlled by section 421B.2. The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

*b. Promotions using noncigarette items.* A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes does not violate chapter 421B. (See 1958 O.A.G. #22.)

*c. Coupons.* A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 421B. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

*d. Replacement packages.* A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID.

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer's affidavit required under Iowa Code section 453A.39 (manufacturer's samples).

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, 453A.39 and chapter 421B.

#### **701—82.11(453A) Refund of tax—unused and destroyed stamps.**

**82.11(1)** *Refunds of unused stamps and destroyed stamps.* Refunds shall be issued for unused stamps which are returned to the department for any reason by a person entitled to receive a refund. This includes unused stamps unaffixed at the close of the business day next preceding the effective date of a decrease in the tax rate which are in excess of the unstamped cigarette inventory on hand as of that date. Banks which are authorized to sell stamps or meter settings are not authorized to issue a refund; the stamps must be returned to and a refund will be issued only by the department. This subrule would also cover stamps which are recalled by the director for purposes of effectuating a change of design of the stamps. A refund will also be issued for stamps which have been lost through destruction, since destroyed stamps have not been used. A refund will not be issued for stamps which are lost (misplaced) or stolen, it being the distributor's or manufacturer's responsibility to maintain proper control over cigarette tax stamps. The claim for refund must be supported by proof of the fact of the loss and proof of the quantity of the loss. The claim must be filed within 30 days of the loss.

**82.11(2)** *Return of used stamps.* Refunds shall be issued for stamps which have been affixed to cigarettes which have become unfit for use or consumption or unsaleable. This refund is available to any permitted distributor or manufacturer upon proof that the cigarettes were returned to the person who manufactured the cigarettes. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. There must also be included therewith an affidavit from the manufacturer to whom the cigarettes were returned verifying the information.

**82.11(3)** *Cigarettes which have been destroyed.* The tax shall be returned on cigarettes which have been destroyed after the tax stamps have been affixed, to the person stamping the cigarettes. The person claiming the loss must be able to prove the fact of the loss and quantity of the loss. The claim, accompanied by proof of the loss and proof of the quantity of the loss, must be filed with the department no later than 30 days following the date the loss occurred. The amount of the refund shall be the face value of the stamps less the applicable discount allowed purchasers of tax stamps. This provision does not apply to cigarettes which are lost (misplaced) or stolen.

**82.11(4)** *Credit in lieu of a refund.* There are no statutory provisions to allow a credit in lieu of a refund of taxes paid for returned or destroyed cigarette stamps.

This rule is intended to implement Iowa Code section 453A.8.

**701—82.12(453A) Delivery sales of alternative nicotine products or vapor products.** Pursuant to Iowa Code section 453A.47C, Iowa sales and use taxes are imposed on all delivery sales of alternative nicotine products or vapor products within Iowa in accordance with Iowa Code chapter 423.

**82.12(1)** *Delivery sale permit.* Every person located within or outside of Iowa making a delivery sale of alternative nicotine products or vapor products within Iowa must obtain a delivery sale permit from the department. Iowa Code section 453A.47A shall govern the permit application and fee process.

*a. Out-of-state retailers.* An out-of-state retailer who has applied and otherwise qualifies for a delivery sale permit shall be issued the permit for the retailer's principal place of business.

*b. Permitted sales.* The delivery sale permit allows a retailer with such a permit to make delivery sales of alternative nicotine products or vapor products via the Internet, telephone, or mail order into Iowa.

**82.12(2) Sales and use tax permit.** A retailer holding a delivery sale permit must also have an Iowa sales or use tax permit. A retailer holding a delivery sale permit must collect and remit all Iowa sales and use tax due, including any applicable local option sales tax, on all sales in Iowa.

**82.12(3) Bond required.** A bond of \$1,000 is required to obtain a delivery sale permit.

**82.12(4) Prohibited delivery sales.** All delivery sales of cigarettes and tobacco products to consumers in Iowa are prohibited.

**82.12(5) Penalties.** Permit suspension and revocation and other penalties imposed in Iowa Code sections 453A.22 and 453A.50 shall apply to retailers holding a delivery sale permit.

This rule is intended to implement Iowa Code sections 453A.47A, 453A.47B, and 453A.47C.  
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TITLE XV  
LOCAL OPTION SALES AND  
SERVICE TAXCHAPTER 107  
LOCAL OPTION SALES AND SERVICES TAX

[Prior to 12/17/86, Revenue Department [730]]

**701—107.1(423B) Definitions.**

**107.1(1) *Incorporation of definitions.*** To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code chapter 423B, Iowa Code section 423.1, and rule 701—211.1(423).

**107.1(2) *Chapter-specific definitions.*** For purposes of this chapter, unless the context otherwise requires:

“*City*” means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

“*Local option tax*” or “*local option taxes*” means the taxes imposed by Iowa Code chapter 423B.

“*Most recent certified federal census*” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs which modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

“*Unincorporated area of the county*” means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.2(423B) Imposition of local option taxes and notification to the department.** This rule describes notification and other requirements as related to the department. For information on the election forms and instructions, see 721—Chapter 21.

**107.2(1) *Notice to the department.*** Within ten days of the election at which a majority of those voting on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

**107.2(2) *Avoiding a lapse in tax due to expiration of a former local option tax.*** A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. Effective July 1, 2001, a local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

This rule is intended to implement Iowa Code section 423B.1.

[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.3(423B) Administration.**

**107.3(1) *Generally.*** The department is charged with the administration of the tax, once imposed, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

**107.3(2) *Incorporation of 701—Chapter 11.*** Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 shall apply to retailers required to collect local option taxes in the

same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.4(423B) Filing returns; payment of tax; penalty and interest.**

**107.4(1) *Incorporation of 701—Chapter 12.*** Except as otherwise stated in this chapter, the requirements of 701—Chapter 12 shall apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

**107.4(2) *Local tax collections not included to determine filing frequency.*** Local option tax collections shall not be included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.5(423B) Permits.** Except as otherwise stated in this chapter, the requirements of 701—Chapter 13 shall apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.6(423B) Sales subject to local option sales and services tax.** All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

**107.6(1) *Sourcing.*** The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 223 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

**107.6(2) *Sellers responsible for collecting local option sales and services tax.*** Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and services tax is imposed upon the same basis as the Iowa state sales and services tax, with the following exceptions:

1. The sales price from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A is subject to local option tax. However, the sales price from the sale or service of these types of fuels is exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;

- Fuel tax must have been paid on the transaction; and

- A refund has not been or will not be allowed.

2. The sales price from the sale of natural gas or electricity in a city or county is exempt from tax if the sales price is subject to a franchise or user fee during the period the franchise or user fee is imposed.

3. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommunications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish,

transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.”

4. The sales price from sales of equipment by the Iowa state department of transportation is exempt from local option sales tax.

5. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

6. Local excise on gas and electricity. If a transaction involves the use of natural gas, natural gas service, electricity, or electric service, a local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. This local excise tax is to be collected and administered in the same manner as local option sales and services tax. Except as otherwise provided in this chapter, all rules governing local option sales and services tax also apply to local excise tax.

This rule is intended to implement Iowa Code section 423B.5.

[ARC 4323C, IAB 2/27/19, effective 4/3/19]

### **701—107.8(423B) Local option sales and services tax payments to local governments.**

**107.8(1)** *County-imposed local sales and services tax; division of funds from accounts.* Division of the amount from each county's account to be distributed is done with these steps.

a. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

b. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the “interim” or “subsequent” census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the

total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

*d.* For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in paragraph 107.8(1) “c” is added to the amount found in paragraph 107.8(1) “b.” This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1: If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

Step 1:

<b>Distribution Basis</b>	<b>Amount</b>
Population	\$ 75,000.00
Property Taxes Levied	<u>25,000.00</u>
Total	<u>\$100,000.00</u>

Step 2:

<b>Jurisdiction</b>	<b>Certified Population</b>		<b>Receipts to be</b>
	<b>Number</b>	<b>Percentage</b>	<b>Distributed</b>
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	<u>17,796</u>	<u>20.59%</u>	<u>15,442.50</u>
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	<u>21,782,457</u>	<u>39.42%</u>	<u>9,855.00</u>
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	<u>15,442.50</u>	<u>9,855.00</u>	<u>25,297.50</u>
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2: If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

<b>Distribution Basis</b>	<b>Amount</b>
Population	\$ 7,500.00
Property Taxes Levied	<u>2,500.00</u>
Total	<u>\$10,000.00</u>

Step 2:

<b>Jurisdiction</b>	<b>Certified Population</b>		<b>Receipts to be</b>
	<b>Number</b>	<b>Percentage</b>	<b>Distributed</b>
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	<u>981</u>	<u>23.45%</u>	<u>1,758.75</u>
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

Step 3:

<b>Jurisdiction</b>	<b>Three-Year Total Taxes Levied</b>		<b>Receipts to be</b>
	<b>Amount</b>	<b>Percentage</b>	<b>Distributed</b>
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	<u>346,849</u>	<u>30.96%</u>	<u>774.50</u>
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

<b>Jurisdiction</b>	<b>Amount to be Distributed</b>		<b>Total</b>
	<b>By Population</b>	<b>By Taxes</b>	<b>Distribution</b>
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	<u>1,758.75</u>	<u>774.00</u>	<u>2,532.75</u>
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3: For the purposes of understanding this example, assume that the numbers for “certified population” from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns’ percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	<u>981</u>	<u>23.21%</u>	<u>1,740.75</u>
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The “amount to be distributed by population” found in Step 4 of Example 2 would then be recomputed based on the new figures.

**107.8(2) City-imposed local option sales and services tax.** For information on the distribution of city-imposed local sales and services tax, see Iowa Code section 423B.7(1).

This rule is intended to implement Iowa Code section 423B.7.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.9(423B) Allocation procedure when sourcing of local option sales tax remitted to the department is unknown.** If the director is unable to determine from which county local option sales tax was collected, that local option sales tax shall be allocated among the various counties in which local option sales and services tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county’s account in the local sales and services tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection which have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and services tax is imposed shall be determined.

4. The amount of population so determined in “3” above for each county shall be added to the amount for every other county in Iowa in which the local option sales and services tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and services tax is imposed is determined.

5. The sum determined to exist in “2” above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in “3” above and the denominator of which is the number calculated by the method described in “4.” The procedure described herein in “5” shall be used until the amount of tax due to every county imposing local option sales and services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county’s account in the local sales and services tax fund. See rule 701—107.1(423B) for characterization of the term “most recent certified federal census” and rule 701—107.8(423B) for methods of rounding off percentages and monetary sums.

This rule is intended to implement Iowa Code section 423B.7(1).  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.10(423B) Application of payments.** Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) “d.” The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and services tax due for the given tax period in relation to combined total payment of sales and local option sales and services tax actually received for that tax period.

This rule is intended to implement Iowa Code section 423B.7.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.11(423B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option sales and services tax.** For information on when motor vehicles, recreational vehicles, and recreational boat rentals are subject to local option sales and services tax, see rule 701—26.68(422).

This rule is intended to implement Iowa Code section 423B.3.  
[ARC 4323C, IAB 2/27/19, effective 4/3/19]

**701—107.12(423B) Computation of local option tax due from mixed sales on excursion boats.** Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable to a particular jurisdiction is based on destination sourcing. See Iowa Code section 423.15 and 701—Chapter 223. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula which rationally apportions the progress of an excursion gambling boat among jurisdictions which impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples A and C utilize a “distance” formula for apportionment. Examples B and D utilize a “time” formula for apportionment. In Examples A and B, state sales tax is included in the sales price of the taxable items. In Examples C and D, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE A: The excursion gambling boat “Auric” is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a “distance” apportionment formula are determined as follows:

1.  $(25 \div 50) \times 0.01 = 0.005$   
(miles in LOST jurisdiction  $\div$  total miles)  $\times$  LOST rate = effective LOST rate
2.  $1 + 0.06 + 0.005 = 1.065$   
 $1 + \text{state sales tax rate} + \text{effective LOST rate} = (1 + \text{effective total tax rate})$
3.  $\$10,000.00 \div 1.065 = \$9,389.67$   
Gross receipts  $\div$  (1 + effective total tax rate) = total sales
4.  $\$9,389.67 \times 0.06 = \$563.38$   
Total sales  $\times$  state tax rate = state tax amount
5.  $\$9,389.67 \times 0.005 = \$46.95$   
Total sales  $\times$  effective LOST rate = LOST amount
6.  $\$563.38 + \$46.95 = \$610.33$   
State tax amount + LOST amount = total tax amount

EXAMPLE B: The excursion gambling boat “Blue Diamond” is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. The calculation is performed as follows:

1.  $(2 \div 3) \times 0.01 = 0.00666$   
(hours in LOST jurisdiction  $\div$  total hours)  $\times$  LOST rate = effective LOST rate
2.  $1 + 0.06 + 0.00666 = 1.06666$   
1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)
3.  $\$10,000.00 \div 1.06666 = \$9,375.06$   
Gross receipts  $\div$  (1 + effective total tax rate) = total sales
4.  $\$9,375.06 \times 0.06 = \$562.50$   
Total sales  $\times$  state tax rate = state tax amount
5.  $\$9,375.06 \times 0.00666 = \$62.44$   
Total sales  $\times$  effective LOST rate = LOST amount
6.  $\$562.50 + \$62.44 = \$624.94$   
State tax due + LOST due = total tax amount

EXAMPLE C: The excursion gambling boat "Golconda" is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is \$106,000; \$100,000 in gross receipts, \$6,000 in state sales tax. Local option tax is calculated as follows:

1.  $(25 \div 50) \times 0.01 = 0.005$   
(miles in LOST jurisdiction  $\div$  total miles)  $\times$  LOST rate = effective LOST rate
2.  $1 + 0.005 = 1.005$   
1 + effective LOST rate
3.  $\$100,000.00 \div 1.005 = \$99,502.49$   
Gross receipts including LOST  $\div$  (1 + effective LOST rate) = total sales
4.  $\$99,502.49 \times 0.06 = \$5,970.15$   
Total sales  $\times$  state tax rate = state tax amount
5.  $\$100,000.00 - 99,502.49 = \$497.51$   
Gross receipts including LOST - total sales = LOST amount
6.  $\$5,970.15 + \$497.51 = \$6,467.66$   
State tax due + LOST due = total tax amount
7.  $\$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$   
Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE D: The excursion gambling boat "Black Jack" is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is \$159,000; \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

1.  $(2 \div 3) \times 0.01 = 0.00666$  effective LOST rate  
(hours in LOST jurisdiction  $\div$  total hours)  $\times$  LOST rate = effective LOST rate
2.  $1 + 0.00666 = 1.00666$   
1 + effective LOST rate
3.  $\$150,000.00 \div 1.00666 = \$149,007.61$   
Gross receipts including LOST but not state tax  $\div$  (1 + effective LOST rate) = total sales
4.  $\$149,007.61 \times 0.06 = \$8,940.46$   
Total sales  $\times$  state tax rate = state tax amount
5.  $\$150,000.00 - 149,007.61 = \$992.39$   
Gross receipts including LOST but not state tax - total sales = LOST amount

$$6. \quad \$8,940.46 + \$992.39 = \$9,932.85$$

State tax amount + LOST amount = total tax amount

$$7. \quad \$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the “distance” method of apportionment set out in Examples A and C or the “time” method set out in B and D above without informing the department in advance of filing a sales tax return of the licensee’s choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 423B.5.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date of 107.16 until adjournment of the 2001 Session of the General Assembly.

CHAPTER 223  
SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED  
DIGITAL PRODUCTS

**701—223.1(423) Definitions.**

“*Agreement*” means the streamlined sales and use tax agreement authorized by subchapter IV of Iowa Code chapter 423 to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use tax.

“*Department*” means, for the purpose of this chapter, the Iowa department of revenue.

“*First use of a service*” occurs, for the purpose of this chapter, at the location at which the service is received.

“*First use of a service performed on tangible personal property*” means, for the purpose of this chapter, receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

“*Governing board*” means the group comprised of representatives of the member states of the agreement and created by the agreement to be responsible for the agreement’s administration and operation.

“*Receive*” or “*receipt*,” with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—223.3(423), the location (or locations) where the purchaser (or the purchaser’s donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services described in rule 701—223.4(423), the location (or locations) where the service is performed on the purchaser (or the purchaser’s donee) is the location where the purchaser receives the service.

“*Retailer*” means and includes every person engaged in the business of selling taxable services at retail. “Retailer” includes a seller obliged to collect sales or use tax.

“*Seller*” means a person making sales, leases or rentals of services.  
[ARC 0310C, IAB 9/5/12, effective 10/10/12]

**701—223.2(423) General sourcing rules for taxable services.** Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services using the destination sourcing requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the service is received, first used, or could potentially be first used, by the purchaser or the purchaser’s donee. With respect to taxable services performed on tangible personal property, the location where the retailer performs the taxable service does not determine the location where the purchaser receives the service. This rule and subsequent rules in Chapter 223 clarify the application of the definition of “receive” or “receipt” to various categories of services to assist in applying the sourcing provisions of Iowa Code section 423.15 to sales of services. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

**223.2(1)** If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (See Iowa Code section 423.5.)

**223.2(2)** If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay

Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (See Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

[ARC 0310C, IAB 9/5/12, effective 10/10/12; ARC 4324C, IAB 2/27/19, effective 4/3/19]

**701—223.3(423) First use of services performed on tangible personal property.**

**223.3(1)** *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

**223.3(2)** *Sourcing of taxable services performed on tangible personal property as applied to local option sales and services tax.* A local option sales and services tax shall be imposed on the same basis as the state sales and services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and services tax sourcing rules shall be the same as the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

**223.3(3)** *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;

- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

**223.3(4) Examples of sourcing rules for motor and machine repair.** The following examples are intended to clarify when motor and machine repair services are deemed “received.”

EXAMPLE A: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown’s subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa’s use tax rate exceeds Illinois’s tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE B: Same facts as in subrule 223.3(4), Example A, except that the Illinois repair shop delivers the repaired lawnmower to the owner’s residence in Iowa. In this case, the potential first use is at Ms. Brown’s residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE C: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho’s home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa; Iowa sales tax is due.

EXAMPLE D: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer’s location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa; Iowa sales tax is due.

EXAMPLE E: Same facts as in subrule 223.3(4), Example D, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory’s location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa’s use tax rate exceeds Minnesota’s tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE F: Same facts as in subrule 223.3(4), Example D, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer’s location in Iowa. Since the terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer’s location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

**223.3(5) Examples of sourcing rules for the painting of tangible personal property.** The following examples are intended to clarify when the service of painting of tangible personal property is deemed “received.”

EXAMPLE A: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter’s shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa; Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter’s shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter’s location in

Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

**223.3(6)** *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(7)** *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(8)** *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE A: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE B: Mr. Marx who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois, and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

**223.3(9)** *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

**223.3(10)** *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed “received.”

EXAMPLE A: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards’ bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards’ potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax is due even though Bike-o-rama is located in Ankeny where there is no local option sales and service tax. Iowa sales tax is also due.

EXAMPLE B: Same facts as in subrule 223.3(10), Example A, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny, and no local option sales and service tax is due on the sales price of the repair. Iowa sales tax is due.

EXAMPLE C: Same facts as in subrule 223.3(10), Example A, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards’ bike to his home in Slater, Iowa. Since the terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater’s local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

[ARC 0310C, IAB 9/5/12, effective 10/10/12; ARC 4324C, IAB 2/27/19, effective 4/3/19]

#### **701—223.4(423) Sourcing rules for personal care services.**

**223.4(1)** *Definition.* “Personal care services” means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

**223.4(2)** *Sourcing of personal care services.* Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of rule 701—211.1(423) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser’s donee). The services will be received by the purchaser (or the purchaser’s donee) either at the seller’s location, pursuant to Iowa Code section 423.15(1) “a,” or at the purchaser’s (or the purchaser’s donee) location, pursuant to Iowa Code section 423.15(1) “b.”

**223.4(3)** *Examples of sourcing of personal care services.* The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE A: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa; Iowa sales tax is due.

EXAMPLE B: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa’s use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference

between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE C: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa, and therefore Iowa sales tax is due.

[ARC 0310C, IAB 9/5/12, effective 10/10/12]

**701—223.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events.** Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—223.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. See Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

**223.5(1) Sales of admissions to virtual events.** First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

**223.5(2) Sales of admissions that can be used at multiple locations.** Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore the sale is sourced to Clive. See Iowa Code section 423.15(1) "c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

[ARC 4324C, IAB 2/27/19, effective 4/3/19]

**701—223.6(423) Sourcing rules for tangible personal property and specified digital products.** All sales of tangible personal property and specified digital products by sellers obligated to collect sales and

use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1) "b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. See Iowa Code section 423.1(43) "b" and *In the Matter of Clipper Windpower, LLC*, Iowa Dep't of Revenue Declaratory Order No. 2016-300-2-0058 (Sept. 8, 2017).

**223.6(1)** *General examples of sourcing of tangible personal property.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. See Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. See Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The retail store's delivery truck delivers the product to X's home in Waverly, Iowa. The sale is sourced to X's home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X's home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) "b." The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X's home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) "b." It is irrelevant that the product was delivered by a third-party common carrier. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser's donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales

and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y's Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser's donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. See Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser's address available from seller's business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X's payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer's business records indicate that the purchaser's address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) "c." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser's address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) "d." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer's address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X's address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. See Iowa Code section 423.15(1) "e." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

**223.6(2) General examples of sourcing of specified digital products.** The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller's business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests' access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y's on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. See Iowa Code section 423.15(1) "a." Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (see Iowa Code section 423.1(43)) and that location is known to the seller. See Iowa Code section 423.15(1) "b." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser's address is available from seller's business records. X purchases a specified digital product from C's website. Prior to purchasing the specified digital product, X creates a user account through C's website and lists X's home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C's business records that are maintained in the ordinary course of business indicate that X's address is in Jefferson, Iowa. See Iowa Code section 423.15(1) "c." If C meets the thresholds described in Iowa

Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. See Iowa Code section 423.15(1) "d." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

**223.6(3)** *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). See Iowa Code section 423.15(2) "a." In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1) "a" governs the sourcing of the down payment. See subrule 223.5(1). Therefore in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the "primary property location" of the couch during those periods. See Iowa Code section 423.15(2) "a." Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. See Iowa Code section 423.15(2) "a." Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The \$50 down payment constitutes the "first periodic payment" and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1) "b." See Iowa Code section 423.15(2) "a." Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. See subrule 223.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. See subrule 223.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, partway through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the "primary property location" as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. See Iowa Code section 423.15(2) "a."

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, partway through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the "primary property location" indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. See Iowa Code section 423.15(2) "a." Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. See Iowa Code section 423.15(1) "b." C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 223.6(1). See Iowa Code section 423.15(2) "b."

**223.6(4) Sales of items from vending machines.** Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

**223.6(5) Sales of items by an itinerant merchant, peddler, or salesperson having a route.** When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1) "b," regardless of whether the location is the customer's home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

**223.6(6) Items purchased for resale but withdrawn from inventory.** If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the items were purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X's home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County are due.

**223.6(7) Items withdrawn from inventory by a manufacturer.** Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. See rule 701—219.6(423) for more information.

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X's withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax are due.

[ARC 4324C, IAB 2/27/19, effective 4/3/19]

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

[Filed ARC 0310C (Notice ARC 0199C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

[Filed ARC 4324C (Notice ARC 4200C, IAB 1/2/19), IAB 2/27/19, effective 4/3/19]

CHAPTER 26  
CONSTRUCTION SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 26]

**875—26.1(88) Adoption by reference.** Federal Safety and Health Regulations for Construction beginning at 29 CFR 1926.16 and continuing through 29 CFR, Chapter XVII, Part 1926, are hereby adopted by reference for implementation of Iowa Code chapter 88. These federal rules shall apply and be interpreted to apply to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88, not the Contract Work Hours and Safety Standards Act, and shall apply and be interpreted to apply to enforcement by the Iowa commissioner of labor, not the United States Secretary of Labor or the Federal Occupational Safety and Health Administration. The amendments to 29 CFR 1926 are adopted as published at:

38 Fed. Reg. 16856 (June 27, 1973)  
38 Fed. Reg. 27594 (October 5, 1973)  
38 Fed. Reg. 33397 (December 4, 1973)  
39 Fed. Reg. 19470 (June 3, 1974)  
39 Fed. Reg. 24361 (July 2, 1974)  
40 Fed. Reg. 23072 (May 28, 1975)  
41 Fed. Reg. 55703 (December 21, 1976)  
42 Fed. Reg. 2956 (January 14, 1977)  
42 Fed. Reg. 37668 (July 22, 1977)  
43 Fed. Reg. 56894 (December 5, 1978)  
45 Fed. Reg. 75626 (November 14, 1980)  
51 Fed. Reg. 22733 (June 20, 1986)  
51 Fed. Reg. 25318 (July 11, 1986)  
52 Fed. Reg. 17753 (May 12, 1987)  
52 Fed. Reg. 36381 (September 28, 1987)  
52 Fed. Reg. 46291 (December 4, 1987)  
53 Fed. Reg. 22643 (June 16, 1988)  
53 Fed. Reg. 27346 (July 20, 1988)  
53 Fed. Reg. 29139 (August 2, 1988)  
53 Fed. Reg. 35627 (September 14, 1988)  
53 Fed. Reg. 35953 (September 15, 1988)  
53 Fed. Reg. 36009 (September 16, 1988)  
53 Fed. Reg. 37080 (September 23, 1988)  
54 Fed. Reg. 15405 (April 18, 1989)  
54 Fed. Reg. 23850 (June 2, 1989)  
54 Fed. Reg. 30705 (July 21, 1989)  
54 Fed. Reg. 41088 (October 5, 1989)  
54 Fed. Reg. 45894 (October 31, 1989)  
54 Fed. Reg. 49279 (November 30, 1989)  
54 Fed. Reg. 52024 (December 20, 1989)  
54 Fed. Reg. 53055 (December 27, 1989)  
55 Fed. Reg. 3732 (February 5, 1990)  
55 Fed. Reg. 42328 (October 18, 1990)  
55 Fed. Reg. 47687 (November 14, 1990)  
55 Fed. Reg. 50687 (December 10, 1990)  
56 Fed. Reg. 2585 (January 23, 1991)  
56 Fed. Reg. 5061 (February 7, 1991)  
56 Fed. Reg. 41794 (August 23, 1991)  
56 Fed. Reg. 43700 (September 4, 1991)

57 Fed. Reg. 7878 (March 5, 1992)  
57 Fed. Reg. 24330 (June 8, 1992)  
57 Fed. Reg. 29119 (June 30, 1992)  
57 Fed. Reg. 35681 (August 10, 1992)  
57 Fed. Reg. 42452 (September 14, 1992)  
58 Fed. Reg. 21778 (April 23, 1993)  
58 Fed. Reg. 26627 (May 4, 1993)  
58 Fed. Reg. 35077 (June 30, 1993)  
58 Fed. Reg. 35310 (June 30, 1993)  
58 Fed. Reg. 40468 (July 28, 1993)  
59 Fed. Reg. 215 (January 3, 1994)  
59 Fed. Reg. 6170 (February 9, 1994)  
59 Fed. Reg. 36699 (July 19, 1994)  
59 Fed. Reg. 40729 (August 9, 1994)  
59 Fed. Reg. 41131 (August 10, 1994)  
59 Fed. Reg. 43275 (August 22, 1994)  
59 Fed. Reg. 65948 (December 22, 1994)  
60 Fed. Reg. 9625 (February 21, 1995)  
60 Fed. Reg. 11194 (March 1, 1995)  
60 Fed. Reg. 33345 (June 28, 1995)  
60 Fed. Reg. 34001 (June 29, 1995)  
60 Fed. Reg. 36044 (July 13, 1995)  
60 Fed. Reg. 39255 (August 2, 1995)  
60 Fed. Reg. 50412 (September 29, 1995)  
61 Fed. Reg. 5509 (February 13, 1996)  
61 Fed. Reg. 9248 (March 7, 1996)  
61 Fed. Reg. 31431 (June 20, 1996)  
61 Fed. Reg. 41738 (August 12, 1996)  
61 Fed. Reg. 43458 (August 23, 1996)  
61 Fed. Reg. 46104 (August 30, 1996)  
61 Fed. Reg. 56856 (November 4, 1996)  
61 Fed. Reg. 59831 (November 25, 1996)  
62 Fed. Reg. 1619 (January 10, 1997)  
63 Fed. Reg. 1295 (January 8, 1998)  
63 Fed. Reg. 1919 (January 13, 1998)  
63 Fed. Reg. 3814 (January 27, 1998)  
63 Fed. Reg. 13340 (March 19, 1998)  
63 Fed. Reg. 17094 (April 8, 1998)  
63 Fed. Reg. 20099 (April 23, 1998)  
63 Fed. Reg. 33468 (June 18, 1998)  
63 Fed. Reg. 35138 (June 29, 1998)  
63 Fed. Reg. 66274 (December 1, 1998)  
64 Fed. Reg. 22552 (April 27, 1999)  
66 Fed. Reg. 5265 (January 18, 2001)  
66 Fed. Reg. 37137 (July 17, 2001)  
67 Fed. Reg. 57736 (September 12, 2002)  
69 Fed. Reg. 31881 (June 8, 2004)  
70 Fed. Reg. 1143 (January 5, 2005)  
71 Fed. Reg. 2885 (January 18, 2006)  
70 Fed. Reg. 76985 (December 29, 2005)  
71 Fed. Reg. 10381 (February 28, 2006)  
71 Fed. Reg. 36008 (June 23, 2006)

71 Fed. Reg. 76985 (August 24, 2006)  
 72 Fed. Reg. 64428 (November 15, 2007)  
 73 Fed. Reg. 75583 (December 12, 2008)  
 75 Fed. Reg. 12685 (March 17, 2010)  
 75 Fed. Reg. 27429 (May 17, 2010)  
 75 Fed. Reg. 48130 (August 9, 2010)  
 76 Fed. Reg. 33606 (June 8, 2011)  
 77 Fed. Reg. 17764 (March 26, 2012)  
 76 Fed. Reg. 80738 (December 27, 2011)  
 77 Fed. Reg. 23118 (April 18, 2012)  
 77 Fed. Reg. 37598 (June 22, 2012)  
 77 Fed. Reg. 42988 (July 23, 2012)  
 77 Fed. Reg. 46949 (August 7, 2012)  
 78 Fed. Reg. 23841 (April 23, 2013)  
 78 Fed. Reg. 32116 (May 29, 2013)  
 79 Fed. Reg. 20629 (April 11, 2014)  
 79 Fed. Reg. 56960 (September 24, 2014)  
 79 Fed. Reg. 57798 (September 26, 2014)  
 80 Fed. Reg. 25518 (May 4, 2015)  
 80 Fed. Reg. 60039 (October 5, 2015)  
 81 Fed. Reg. 16092 (March 25, 2016)  
 81 Fed. Reg. 16875 (March 25, 2016)  
 83 Fed. Reg. 56244 (November 9, 2018)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

[ARC 7699B, IAB 4/8/09, effective 5/13/09; ARC 8997B, IAB 8/11/10, effective 9/15/10; ARC 9230B, IAB 11/17/10, effective 12/22/10; ARC 9755B, IAB 9/21/11, effective 10/26/11; ARC 0173C, IAB 6/13/12, effective 7/18/12; ARC 0282C, IAB 8/22/12, effective 9/26/12; ARC 0726C, IAB 5/1/13, effective 6/5/13; ARC 0898C, IAB 8/7/13, effective 9/11/13; ARC 1049C, IAB 10/2/13, effective 11/6/13; ARC 1531C, IAB 7/9/14, effective 8/13/14; ARC 1803C, IAB 12/24/14, effective 1/28/15; ARC 1908C, IAB 3/18/15, effective 4/22/15; ARC 2136C, IAB 9/16/15, effective 10/21/15; ARC 2595C, IAB 6/22/16, effective 7/27/16; ARC 4320C, IAB 2/27/19, effective 4/3/19]

**875—26.2(88) Beryllium exposure limits.** Effective May 11, 2018, the eight-hour time-weighted average permissible exposure limit for beryllium is 0.2 micrograms per cubic liter, and the short-term exposure limit for beryllium is 2.0 micrograms per cubic meter over a 15-minute sampling period.

This rule is intended to implement Iowa Code section 88.5.

[ARC 3721C, IAB 3/28/18, effective 5/11/18]

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